

# TRADE PRACTICES ACT 1974

## Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

### FURNITURE AND BEDDING CONCEPTS LTD ACN 125 275 201

#### PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (“ACCC”) by Furniture and Bedding Concepts Ltd ACN 125 275 201 (formerly known as Sleep City Holdings Ltd) (“FABC”) of 1/254 Canterbury Road, Bayswater North VIC 3153, under section 87B of the *Trade Practices Act 1974* (“the Act”).

#### BACKGROUND

2. FABC is the parent company which owns and operates businesses under the following brand names:
  - 2.1 ‘Sleep City’, regarding the manufacture, importing and retailing of bedding products; and
  - 2.2 ‘Everyday Living’, regarding the manufacture, importing and retailing of furniture and home wares.
3. All references in this undertaking to “**the FABC Group**” mean FABC and its subsidiaries including Uinta Beds Pty Ltd, SDM Marketing Pty Ltd and Everyday Sleep Trading Pty Ltd.
4. There are currently 54 Sleep City retail stores and 53 Everyday Living retail stores operating in New South Wales, Queensland, Australian Capital Territory, South Australia, Tasmania and Victoria.
5. In August 2008, FABC published a Spring ‘08 catalogue on behalf of its Sleep City and Everyday Living businesses (“**the Spring ‘08 catalogue**”) for the period of 14 August 2008 until 30 September 2008 (“**the sale**”). Many of the products in the Spring ‘08 catalogue were promoted by comparison pricing in the “Now \$X Save \$Y” format (“**the products**”). The products and the comparison pricing are referred to in ‘**Schedule 1**’.
6. Approximately four million copies of the Spring ‘08 catalogue were distributed by:
  - 6.1 mail box drop in New South Wales, Queensland, Australian Capital Territory, South Australia, Tasmania and Victoria;
  - 6.2 newspaper insert in *The Mudgee Weekly*, *The Area News* and *The Armidale Express Extra* in New South Wales and *The Redland Times* in Queensland;

- 6.3 in-store display at Sleep City stores; and
- 6.4 in-store display at Everyday Living stores.
7. The sale was promoted on:
- 7.1 television, from 17 August 2008 until 14 September 2008, on channel 7/Prime, in New South Wales, Queensland, Australian Capital Territory, South Australia, Tasmania and Victoria;
- 7.2 television, from 17 August 2008 until 27 September 2008, on Foxtel nationally;
- 7.3 radio, from 15 August 2008 to 17 August 2008 and from 19 September 2008 to 21 September 2008, on:
- (i) 2GB and 2DayFM in New South Wales;
  - (ii) 3AW in Victoria;
  - (iii) B105FM in Queensland; and
  - (iv) SAFM in South Australia;
- 7.4 the Sleep City website at [www.sleepcity.com.au](http://www.sleepcity.com.au) from 13 August 2008 until 30 September 2008; and
- 7.5 the Everyday Living website at [www.everydayliving.com.au](http://www.everydayliving.com.au) from 13 August 2008 until 30 September 2008.
8. FABC admits that the represented savings for the products were determined in comparison to FABC's own internally determined recommended retail prices, rather than the prices at which the products were offered for sale or sold immediately prior to the commencement of the sale. FABC admits that the prices at which many of the products were offered for sale or sold for a reasonable period immediately prior to the commencement of the sale were lower than the recommended retail prices.
9. Accordingly, FABC admits that the representations made in the 'Now \$X Save \$Y' format in the Spring '08 catalogue did not accurately reflect the actual savings available for many of the products for the duration of the sale, and were likely to breach sections 52 and 53(e) of the Act.
10. Section 52 of the Act prohibits conduct that is misleading or deceptive or that is likely to mislead or deceive. Section 53(e) of the Act states that a corporation will not, in trade or commerce, in connexion with the supply or possible supply of goods or services make a false or misleading representation with respect to the price of goods or services.
11. Upon being made aware of the ACCC's concerns, FABC has:
- 11.1 ceased the conduct described in paragraph 8 above; and
  - 11.2 offered this Undertaking to the ACCC pursuant to section 87B of the Act.

## COMMENCEMENT

12. This Undertaking comes into effect when:

12.1 the Undertaking is executed by FABC; and

12.2 the ACCC accepts the Undertaking so executed,

(**“the commencement of this Undertaking”**).

13. Upon the commencement of this Undertaking, FABC undertakes to assume the obligations set out in paragraphs 14 to 20 below.

## UNDERTAKINGS

14. FABC hereby undertakes for the purposes of section 87B of the Act that, for a period of 3 years from the commencement of this Undertaking:

14.1 the FABC Group, whether by itself or by the conduct of its directors, servants, agents or employees, will not in trade or commerce:

- (i) offer any goods or services for sale using comparative price representations, including in the ‘Now \$X Save \$Y’ format, if the goods or services have not previously been offered for sale at the higher prices for a reasonable period immediately prior to the commencement of the sale;
- (ii) use false, misleading or deceptive representations with respect to the price of goods or services in its advertising or other forms of promotion.

## Offer to consumers

15. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

15.1 offer a \$100 gift voucher (not redeemable for cash) to customers who purchased one or more of the products during the sale and that the offered gift voucher:

- (i) will be made available for six months from the commencement of this Undertaking (**“the six month time limitation”**);
- (ii) will not contain any restrictions on use other than the six month time limitation;
- (iii) may be used for one or more purchases during the six month time limitation; and
- (iv) will be offered to consumers by way of letter, in-store notices and website notices as described in paragraphs 16 to 18 below, (**“the offer”**);

15.2 within 14 days of the expiry of the offer, provide a written report to the ACCC on the number of customers who redeemed the offer in:

- (i) a Sleep City store; and
- (ii) an Everyday Living store.

#### Letter to consumers

16. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

16.1 within 14 days of the commencement of this Undertaking, send a letter to those persons who FABC knows to have purchased one or more of the products during the sale and for whom FABC has address information, in the form of '**Annexure A (1)**' and '**Annexure A (2)**' to this Undertaking respectively ("**the letter**");

16.2 ensure the letter has the following specifications:

- (i) it will display the 'Sleep City' or 'Everyday Living' logo as applicable;
- (ii) the body text will be at least 12 point Times New Roman black font and left justified on a white background; and
- (iii) it will contain a contact phone number for 'Sleep City' or 'Everyday Living' whereby recipients may enquire about the offer.

16.3 within 14 days of the letter being sent, provide to the ACCC:

- (i) a copy of the letter; and
- (ii) written evidence of its compliance with paragraph 16.1 above.

#### In-store notice

17. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

17.1 within 14 days after the commencement of this Undertaking, ensure every Sleep City and Everyday Living store has prominently displayed at its customer service desk a corrective notice in the form of '**Annexure B (1)**' and '**Annexure B (2)**' to this Undertaking respectively ("**the in-store notice**");

17.2 ensure that the in-store notice is displayed in accordance with paragraph 17.1 above for a period of not less than 3 continuous months;

17.3 ensure that the in-store notice has the following specifications:

- (i) it will be of a size no less than A4 and on white paper;
- (ii) the 'Sleep City' or 'Everyday Living' logo will be at least 20mm in height;
- (iii) the notice will have a heading of at least 20 point Times New Roman black font and centred;
- (iv) the body text will be at least 14 point Times New Roman black font on a white background and left justified; and
- (v) the logo of the ACCC will be at least 20mm in height.

## Website notice

18. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

- 18.1 within 14 days of the commencement of this Undertaking, cause to be published on the Sleep City website [www.sleepcity.com.au](http://www.sleepcity.com.au) and the Everyday Living website [www.everydayliving.com.au](http://www.everydayliving.com.au), a corrective notice in the form of 'Annexure C (1)' and 'Annexure C (2)' to this Undertaking respectively ("the website notice");
- 18.2 ensure that the website notice is displayed in accordance with paragraph 18.1 above for a period of not less than 3 continuous months;
- 18.3 ensure that the website notice has the following specifications:
  - (i) it will be accessible through a prominent one-click link on the home page entitled 'Apology for Misleading Advertising' of at least 18 point Times New Roman black font, centred and in a bordered box;
  - (ii) the notice will be of a size no less than 19cm x 16cm;
  - (iii) the notice will have a top banner of at least 14 point Times New Roman white font, centred and in a black box;
  - (iv) the notice will have body text of at least 12 point Times New Roman black font on a white background and left justified; and
  - (v) the logo of the ACCC will be at least 20mm in height.

## Information notice

19. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

- 19.1 within 90 days of the commencement of this Undertaking, cause to be published in *Furniture* magazine, an information notice in the form of 'Annexure D' to this Undertaking ("the information notice");
- 19.2 use its best endeavours to ensure the information notice has the following specifications:
  - (i) it will be of a size no less than half a page;
  - (ii) the headline will be in at least 14 point Times New Roman black font;
  - (iii) the body text will be in at least 12 point New Times Roman black font and left justified; and
  - (iv) the logo of the ACCC will be at least 15 mm in height.
- 19.3 within 14 days of the publication of the information notice, provide to the ACCC written evidence of its compliance with paragraphs 19.1 and 19.2 above.

## Trade Practices Compliance Program

20. FABC hereby undertakes for the purposes of section 87B of the Act that it will, at its own expense:

20.1 within 3 months of the commencement of this Undertaking, review and update its existing Trade Practices Compliance Program to ensure that it meets the requirements set out in 'Annexure E' for the employees or other persons involved in the FABC Group's business, being a program designed to:

- (i) minimise the FABC Group's risk of future breaches of Part V of the Act; and
- (ii) ensure the FABC Group is aware of the responsibilities and obligations in relation to the requirements of Part V of the Act, in particular sections 52 and 53 of the Act;

20.2 maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the commencement of this Undertaking; and

20.3 provide a copy of any documents required by the ACCC in accordance with Annexure E.

## ACKNOWLEDGMENTS

21. FABC acknowledges that:

21.1 the ACCC will make this Undertaking available for public inspection;

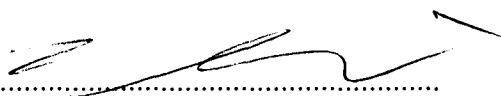
21.2 the ACCC may from time to time publicly refer to this Undertaking;

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

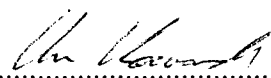
21.4 a summary of the ACCC Compliance Program Review reports referred to in Annexure E of the Undertaking may be held with this undertaking on the public register.

**EXECUTED BY**

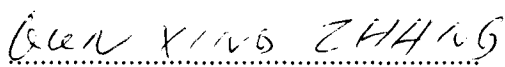
Furniture and Bedding Concepts Ltd (ACN 125 275 201) (formerly known as Sleep City Holdings Ltd) by its authorised officers pursuant to section 127(1) of the Corporations Act 2001:

  
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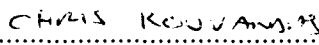
Director

  
.....

~~Director~~/Secretary

  
.....

Print name

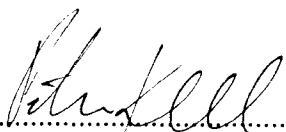
  
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Print name

This 2<sup>nd</sup> day of JUNE 2009

This 2<sup>nd</sup> day of JUNE 2009

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

  
.....

Peter Richard Kell  
Acting Chairman

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

**SCHEDULE 1**

*Sleep City products promoted in the Spring '08 catalogue using comparative price representations in the 'Now \$X Save \$Y' format*

<b>Item</b>	<b>Now</b>	<b>Save</b>
Bathurst Queen Bed	\$469	\$505
Xenia Queen Bed	\$499	\$250
Pioneer Queen Bed	\$549	\$357
Brodwick Queen Bed	\$249	\$26
McLeod Queen Bed	\$429	\$260
Tokyo Queen Bed Package	\$999	\$894
Adrian Queen Bed	\$329	\$45
Country Lane Queen Bed	\$299	\$80
Spinalcare Queen Mattress	\$649	\$143
Excellence Queen Mattress	\$999	\$280
Luxury Queen Mattress	\$1399	\$448
Ultimate Queen Mattress	\$1999	\$1000
Hamilton Queen Bed	\$499	\$499
Corrina Queen Bed	\$449	\$300
Farmyard 6 door buffet only	\$569	\$330
Hamilton Filing Cabinet	\$369	\$176
Ashton Granite Workbench	\$349	\$199



**SCHEDULE 1 (cont.)**

*Everyday Living products promoted in the Spring '08 catalogue using comparative price representations in the 'Now \$X Save \$Y' format*

<b>Item</b>	<b>Now</b>	<b>Save</b>
Ashton Bookcase	\$290	\$205
Mondo 2 Seater Sofa	\$1329	\$200
New Madison Low TV Unit	\$569	\$310
Broken Hill Square Coffee Table	\$399	\$259
Dalton 2100 Table	\$599	\$121
Dalton Lamp Table	\$229	\$91
Farmyard 6 Door Buffet & Hutch	\$829	\$599
Farmyard Table	\$469	\$246
Farmyard Bench	\$169	\$49
Farmyard Stool	\$99	\$16
Farmyard Coffee Table	\$399	\$100
Farmyard Sofa Table	\$349	\$86
Columbus Iron Stool with back	\$129	\$20
Columbus Iron Stool stackable	\$99	\$30
Napoli Chair with Taupe Cover	\$129	\$49
Ashton Base TV Unit	\$429	\$266
New Madison Square Coffee Table	\$429	\$170
Ashton Desk	\$399	\$260
Hamilton 7 Drawer Desk	\$729	\$360
Hamilton Display Cabinet	\$699	\$387

**SCHEDULE 1 (cont.)**

*Everyday Living products promoted in the Spring '08 catalogue using comparative price representations in the 'Now \$X Save \$Y' format*

<b>Item</b>	<b>Now</b>	<b>Save</b>
Louisa 1 Seater Sofa	\$849	\$150
Louisa 3 Seater Sofa	\$1599	\$240
Beaumont 2 Seater Sofa	\$1249	\$280
Beaumont 3 Seater Sofa	\$1499	\$430
Fox 2 Seater Sofa	\$1699	\$230
Fox 3 Seater Sofa	\$2069	\$270
Mondo 3 Seater Sofa	\$1769	\$253
Charlton 1 Seater Sofa	\$969	\$84
Charlton 2 Seater Sofa	\$1149	\$50
Charlton 3 Seater Sofa	\$1529	\$310
Seaview 1 Seater Sofa	\$699	\$51
Seaview 2 Seater Sofa	\$999	\$60
Seaview 3 Seater Sofa	\$1299	\$80
Blackheath Hall Table	\$249	\$186
Broken Hill Lamp Table	\$199	\$236
Broken Hill Breakfast Stool	\$149	\$11
Broken Hill Base TV Unit	\$999	\$649
Blackheath Buffet Only	\$559	\$496
Broken Hill Dining Package 2100 table & 8 chairs	\$1729	\$1319
Broken Hill Buffet & Hutch	\$1299	\$899
Broken Hill Buffet Only	\$699	\$539
Broken Hill 2100 Table	\$699	\$629
Broken Hill Chair	\$129	\$86

**SCHEDULE 1 (cont.)**

*Everyday Living products promoted in the Spring '08 catalogue using comparative price representations in the 'Now \$X Save \$Y' format*

<b>Item</b>	<b>Now</b>	<b>Save</b>
Panther Leather Sofa Package 3 + 2 Seater + Chair	\$4125	\$633
Panther 3 Seater	\$1729	\$304
Panther 2 Seater	\$1399	\$251
Panther Chair	\$999	\$76
Dalton Dining Package 2100 Table & 8 Chairs	\$1389	\$443
Dalton Buffet Only	\$729	\$130
Dalton Chair	\$99	\$40
Dalton Coffee Table	\$429	\$70
Dalton Hall Table	\$429	\$70
Dalton Buffet Only	\$729	\$130
Dalton TV Unit	\$799	\$100
Catalina Sofa Package 3 Seater, Chair & Ottoman	\$2125	\$788
Catalina 3 Seater	\$1229	\$470
Catalina Chair	\$669	\$246
Catalina Ottoman	\$229	\$70

ANNEXURE A (1)  
SLEEP CITY APOLOGY LETTER



[insert date]

[insert customer name]

[insert customer address]

Dear [name],

**APOLOGY FOR MISLEADING ADVERTISING**

During August and September 2008, we published the Sleep City Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled you as our advertising did not always accurately represent the price savings available. We sincerely apologise for any inconvenience caused.

Our records indicate that you purchased a product from the Catalogue. Therefore, in an effort to minimise any adverse affect or inference, **we would like to offer you a \$100 gift voucher.**

The gift voucher can be used by you or a friend or family member at a Sleep City store at any time within the next 6 months. This letter must be presented at the time of purchase to redeem the gift voucher.

We have cooperated fully and continue to work with the ACCC to ensure that we do not mislead you again. We have given the ACCC a court-enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

We again apologise for any inconvenience caused. We hope to see you again in-store soon.

If you have any questions, please contact [insert] on [insert].

Yours sincerely,

**Furniture and Bedding Concepts Ltd**

ANNEXURE A (2)  
EVERYDAY LIVING APOLOGY LETTER



[insert date]

[insert customer name]

[insert customer address]

Dear [name],

**APOLOGY FOR MISLEADING ADVERTISING**

During August and September 2008, we published the Everyday Living Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled you as our advertising did not always accurately represent the price savings available. We sincerely apologise for any inconvenience caused.

Our records indicate that you purchased a product from the Catalogue. Therefore, in an effort to minimise any adverse affect or inference, **we would like to offer you a \$100 gift voucher.**

The gift voucher can be used by you or a friend or family member at an Everyday Living store at any time within the next 6 months. This letter must be presented at the time of purchase to redeem the gift voucher.

We have cooperated fully and continue to work with the ACCC to ensure that we do not mislead you again. We have given the ACCC a court-enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

We again apologise for any inconvenience caused. We hope to see you again in-store soon.

If you have any questions, please contact [insert] on [insert].

Yours sincerely,

**Furniture and Bedding Concepts Ltd**

ANNEXURE B (1)  
SLEEP CITY IN-STORE NOTICE



## APOLOGY FOR MISLEADING ADVERTISING

During August and September 2008, we published the Sleep City Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled consumers as our advertising did not always accurately represent the price savings available.

We have cooperated fully and continue to work with the ACCC to ensure that this kind of misleading advertising does not occur again. We have given the ACCC a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

If you purchased items from the Catalogue during the sale we will be writing to you to apologise and offer you a gift voucher. If you have not heard from us by [date 21 days from commencement of the Undertaking] please contact [Name] on [Number].

We apologise for any inconvenience caused.

If you have any questions please speak with the store manager or contact [Name] on [Number].



Australian  
Competition &  
Consumer  
Commission

This corrective notice has been placed pursuant to undertakings accepted by the ACCC

ANNEXURE B (2)  
EVERYDAY LIVING IN-STORE NOTICE



## APOLOGY FOR MISLEADING ADVERTISING

During August and September 2008, we published the Everyday Living Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled consumers as our advertising did not always accurately represent the price savings available.

We have cooperated fully and continue to work with the ACCC to ensure that this kind of misleading advertising does not occur again. We have given the ACCC a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

If you purchased items from the Catalogue during the sale we will be writing to you to apologise and offer you a gift voucher. If you have not heard from us by [date 21 days from commencement of the Undertaking] please contact [Name] on [Number].

We apologise for any inconvenience caused.

If you have any questions please speak with the store manager or contact [Name] on [Number].



Australian  
Competition &  
Consumer  
Commission

This corrective notice has been placed pursuant to undertakings accepted by the ACCC

ANNEXURE C (1)  
SLEEP CITY WEBSITE NOTICE

The link will be in the following form:

**APOLOGY FOR  
MISLEADING ADVERTISING**

**APOLOGY FOR MISLEADING ADVERTISING**

During August and September 2008, we published the Sleep City Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled consumers as our advertising did not always accurately represent the price savings available.

We have cooperated fully and continue to work with the ACCC to ensure that this kind of misleading advertising does not occur again. We have given the ACCC a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

If you purchased items from the Catalogue during the sale we will be writing to you to apologise and offer you a gift voucher. If you have not heard from us by [date 21 days from commencement of the Undertaking] please contact [Name] on [Number].

We apologise for any inconvenience caused.

If you have any questions please speak with the store manager or contact [Name] on [Number].



**Australian  
Competition &  
Consumer  
Commission**

This corrective notice has been placed pursuant to undertakings accepted by the ACCC



ANNEXURE C (2)  
EVERYDAY LIVING WEBSITE NOTICE

The link will be in the following form:

**APOLOGY FOR  
MISLEADING ADVERTISING**

**APOLOGY FOR MISLEADING ADVERTISING**

During August and September 2008, we published the Everyday Living Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price of the product immediately before the Catalogue sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled consumers as our advertising did not always accurately represent the price savings available.

We have cooperated fully and continue to work with the ACCC to ensure that this kind of misleading advertising does not occur again. We have given the ACCC a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)). We are also strengthening our Trade Practices Compliance Program.

If you purchased items from the Catalogue during the sale we will be writing to apologise and offer you a gift voucher. If you have not heard from us by [date 21 days from commencement of the Undertaking] please contact [Name] on [Number].

We apologise for any inconvenience caused.

If you have any questions please speak with the store manager or contact [Name] on [Number].



**Australian  
Competition &  
Consumer  
Commission**

This corrective notice has been placed pursuant to undertakings accepted by the ACCC

ANNEXURE D  
INFORMATION NOTICE



**A MESSAGE FROM SLEEP CITY AND EVERYDAY LIVING**

During August and September 2008, we published the Sleep City and Everyday Living Spring '08 Sale Catalogue ("Catalogue"). We promoted a range of bedding and furniture products in that Catalogue using price comparisons in the form of "Now \$X, Save \$Y".

We determined the "save" amount for each product by reference to our own internally-set recommended retail price, instead of by reference to the price for which the product was offered or sold for a reasonable period immediately before the sale.

We and the Australian Competition and Consumer Commission ("ACCC") are concerned that our "Now \$X Save \$Y" advertising in the Catalogue is likely to have misled consumers and contravened the *Trade Practices Act 1974* as our advertising did not always accurately represent the price savings available to consumers.

We have cooperated fully and continue to work with the ACCC to ensure that this kind of misleading advertising does not occur again. We have given the ACCC a court enforceable undertaking (details available at [www.accc.gov.au](http://www.accc.gov.au)) and offered affected customers redress. We are also strengthening our Trade Practices Compliance Program.



Australian  
Competition &  
Consumer  
Commission

This information notice has been placed and paid for by Furniture and Bedding Concepts Ltd pursuant to undertakings accepted by the ACCC

## ANNEXURE E

### TRADE PRACTICES COMPLIANCE PROGRAM

Furniture and Bedding Concepts Ltd (formerly known as Sleep City Holdings Ltd) (“**FABC**”) 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, FABC will appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program, and who reports directly to the company Board or governing body (“**the Compliance Officer**”).
2. Within one month of the date of this Undertaking coming into effect, FABC will appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (“**the Compliance Advisor**”) for the purposes set out in paragraph 3.
3. FABC will instruct the Compliance Adviser to conduct a Trade Practices Act risk assessment (“**the Risk Assessment**”) in accordance with 3.1 – 3.4 below:
  - 3.1. identify the areas where the FABC Group is at risk of breaching Part V of the *Trade Practices Act 1974* (“**the Act**”);
  - 3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of the FABC Group, should they occur;
  - 3.3. identify where there may be gaps in the FABC Group’s existing procedures for managing these risks; and
  - 3.4. provide recommendations for action having regard to the assessment.

#### Compliance Policy

4. FABC will, within 2 months of the Undertaking coming into effect, issue a policy statement outlining FABC’s commitment to trade practices compliance (“**the Compliance Policy**”). FABC will ensure that the Compliance Policy is written in plain language and contains:
  - 4.1. a statement of commitment to compliance with the Act;
  - 4.2. a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer; and
  - 4.3. a clear statement that FABC will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Act and will not indemnify them.

## **Complaints Handling System**

5. FABC will ensure that the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external trade practices complaints.

## **Training**

6. FABC will ensure that the Compliance Program provides for regular (at least once a year) and practical trade practices training for all employees of the FABC Group, whose duties could result in them being concerned with conduct that may contravene Part V of the Act. The training program will be designed to ensure awareness by the employees of the FABC Group of the responsibilities and obligations in relation to Part V of the Act, in particular sections 52 and 53 of the Act. FABC must ensure that the training is conducted by either a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
7. FABC will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees, of the FABC Group, whose duties could result in them being concerned with conduct that may contravene Part V of the Act.

## **Reports to Senior Management**

8. FABC will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 3 months on the continuing effectiveness of the Compliance Program.

## **Supply of Compliance Program Documents to the ACCC**

9. FABC will, at its own expense, within 3 months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC, copies of each of the documents constituting the Compliance Program. FABC will implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that FABC maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

## **Review**

10. FABC will, 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:
  - 10.1. **Scope of the Reviews** – the Reviews should be broad and rigorous enough to provide FABC and the ACCC with a supportable verification that FABC has in place a program that complies with each of the requirements detailed in paragraphs 1 – 9 above and to provide the Review reports and opinions detailed at paragraph 11 below;

- 10.2. **Independence of Reviewer** – FABC will 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:
- (i) did not design or implement the Compliance Program;
  - (ii) is not a present or past staff member or director of the FABC Group;
  - (iii) has not acted and does not act for the FABC Group in any trade practices related matters;
  - (iv) has not and does not act for or consult to the FABC Group or provide other services on trade practices related matters other than Compliance Program reviewing; and
  - (v) has no significant shareholding or other interests in the FABC Group.
- 10.3. **Evidence** – FABC will use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in the FABC Group’s possession or control, including without limitation:
- (i) enquiries of any officers, employees, representatives, agents and stakeholders of the FABC Group;
  - (ii) FABC’s records, including FABC’s complaints register/reports and any documents relevant to FABC’s training or induction program; and
  - (iii) documents created by FABC’s consultants and legal practitioners for use in FABC’s Compliance Program.
- 10.4. FABC will 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

11. FABC will 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 FABC)

- 11.1. FABC’s Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program to FABC including:
- (i) if, and to what extent, the Compliance Program of FABC includes all the elements detailed in paragraphs 1 – 10 above;
  - (ii) if, and to what extent, the Trade Practices Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
  - (iii) if, and to what extent, the trade practices training is effective;
  - (iv) if, and to what extent, FABC’s complaints handling system is effective;
  - (v) recommendations for rectifying deficiencies in 11.1 (i) to 11.1 (iv) above that the Reviewer thinks are reasonable necessary to ensure that FABC maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

## **ACCC Compliance Program Review Report** (to be provided to the ACCC)

- 11.2. The ACCC 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:
- (i) details of the evidence gathered and examined during the Review;
  - (ii) the name and relevant experience of the person appointed as the Compliance Officer;
  - (iii) the Reviewer's opinion on whether FABC has in place a Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1 – 10 above;
  - (iv) actions recommended by the Reviewer to ensure the continuing effectiveness of FABC's Compliance Program;
  - (v) confirmation that any actual and potential inadequacies in FABC's Compliance Program have been brought to the attention of the Compliance Officer and its Board;
  - (vi) confirmation that the Reviewer has revisited any actual and potential inadequacies in FABC's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by FABC;
  - (vii) 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
  - (viii) any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 11.3. FABC will ensure that the Review Reports are completed and provided to FABC within two months of each Review.
- 11.4. FABC will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
12. **Recommendations** – FABC will implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that FABC maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
13. If requested by the ACCC, FABC will, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
14. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, FABC will, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting ACCC Review Report to be provided to the ACCC.