

TRADE PRACTICES ACT 1974

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

BY

DIRECT SAVINGS PTY LTD (ACN 108 117 479)

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (the **Commission**) by Direct Savings Pty Ltd (ACN 108 117 479) (**Direct Savings**) of 58/223 Calam Road, Sunnybank in the State of Queensland pursuant to Section 87B of the *Trade Practices Act 1974* (the **Act**).

BACKGROUND

2. Direct Savings carries on business in Brisbane as a discount variety store located at 78 Queen Street, Brisbane in the State of Queensland (the **Direct Savings store**) that retails a wide variety of discount consumer goods, including the retail supply of elastic luggage straps.
3. The Commission is responsible for ensuring compliance with prescribed consumer product safety standards under the Act.
4. Regulation 11C of the Trade Practices (Consumer Product Safety Standards) Regulations 1979 contains the current consumer product safety standard for elastic luggage straps made under s65C(2) of the Act (the **Prescribed Standard**).
5. An elastic luggage strap is defined at sub-regulation 11C(1) of the Prescribed Standard as:
 - (a) *an elastic strap or cord, or 2 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,**but does not include:*
 - (b) *elasticised cargo nets; and*
 - (c) *elasticised straps specifically made for the purpose of securing a vehicle jack or toolkit within a vehicle.*
6. Sub-regulation 11C(3) of the Prescribed Standard requires an elastic luggage strap to have permanently attached to it 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.
7. 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.

8. On or about 22 September 2008 Direct Savings purchased 268 elastic luggage straps from Fang Long Tang Pty Ltd (ACN 098 950 282).
9. Between on or about 22 September 2008 and 15 December 2008, Direct Savings supplied a total of 28 of the following elastic luggage straps to consumers (the **Elastic Luggage Straps**).

Brand Name	Product Description	Length	Barcode
Boboriyong	Stretch cord with flat metal hooks attached at each end of a thick elastic cord.	1.5m	6938383130349
Boboriyong	2 x stretch cord with plastic-coated hooks attached at each end of striped elastic cord	90cm	6938383130356

10. On 15 December 2008, staff of the Commission purchased a quantity of the Elastic Luggage Straps from the Direct Savings store.
11. An examination of the Elastic Luggage Straps purchased revealed that no permanent Warning Label was attached to the Elastic Luggage Straps as required by the Prescribed Standard. The Commission therefore considers that the Elastic Luggage Straps did not comply with the requirements of the Prescribed Standard and that Direct Savings breached section 65C(1)(a) by supplying the Elastic Luggage Straps.
12. Upon becoming aware of the Commission's concerns Direct Savings withdrew the Elastic Luggage Straps from the Direct Savings store, and also arranged for the products to be withdrawn from its associated stores, namely:
 - 12.1. Direct Savings at 392 Logan Road, Stones Corner in the State of Queensland, owned and operated by Direct Savings Stones Corner Pty Ltd (ACN 117 741 830); and
 - 12.2. I-Life Factory at 240 Brunswick Street, Fortitude Valley in the State of Queensland, owned and operated by I-Life Factory Pty Ltd (ACN 101 777 182).
13. Direct Savings voluntarily published a product safety recall notice in the *Courier Mail* newspaper on 17-18 January 2008 and displayed a copy of the recall notice in its store for a period of 2 months following publication of the recall notice.
14. Direct Savings acknowledges that by engaging in the conduct set out above it contravened section 65C of the Act.
15. Direct Savings and the Commission have agreed to resolve this matter by the giving and accepting of an undertaking on the terms and conditions as follows.

INTERPRETATION

16. In this Undertaking "product safety standard" includes a notice under section 65C declaring goods to be unsafe goods and notice under section 65C imposing a permanent ban on goods.

COMMENCEMENT

17. This Undertaking comes into effect on the date being the later of the following:
 - 17.1. the date on which Direct Savings executes the Undertaking; and
 - 17.2. the date on which the Commission accepts the Undertaking so executed.

UNDERTAKINGS

18. Direct Savings makes the following undertakings to the Commission for the purposes of section 87B of the Act.

Product safety

19. For a period of 3 years from the date of this undertaking coming into effect, Direct Savings:
 - 19.1. will ensure that any goods supplied by it that are subject to a prescribed consumer product safety standard under the Act comply with the relevant standard; and
 - 19.2. will not supply goods that do not comply with a prescribed consumer product safety standard under the Act.

Trade Practices Compliance Program

20. Direct Savings will:
 - 20.1. within 3 months of the date 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 Attachment A for the employees or other persons involved in Direct Savings' business, being a program designed to:
 - 20.1.1. minimise Direct Savings' risk of future breaches of Part V, Division 1A of the Act, in particular sections 65C and 65D of the Act; and
 - 20.1.2. to ensure awareness of its responsibilities and obligations in relation to the requirements of Part V, Division 1A of the Act, in particular sections 65C and 65D;
 - 20.2. maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - 20.3. provide, at its own expense, a copy of any documents reasonably required by the Commission in accordance with Annexure A.

Product safety audit

21. Within 4 months of the date of this Undertaking coming into effect, Direct Savings will conduct a complete audit of its range of products to identify and cease supply of any product that does not comply with a (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard under the Act (the **Audit**).
22. Within 14 days of conducting the Audit, Direct Savings will provide the Commission with a report stating:

- 22.1. that the Audit has been completed;
- 22.2. the details of each product identified in the Audit that does not comply with a (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard under the Act; and
- 22.3. any action that Direct Savings has taken or will take as a result of the Audit, such as withdrawing products from sale or issuing a product safety recall notice.

GENERAL ACKNOWLEDGEMENTS

23. Direct Savings acknowledges that:
- 23.1. the Commission will make this undertaking available for public inspection;
- 23.2. the Commission will from time to time publicly refer to this undertaking; and
- 23.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED by DIRECT SAVINGS PTY LTD

(ACN 108 117 479) by its authorised officers pursuant)
to section 127(1) of the Corporations Act 2001)



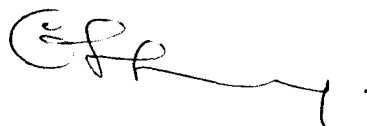
Signature of Director

Hsu-Tang Liu

Name of Director

This 26 day of June 2009

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



Graeme Julian Samuel
Chairperson

This 7th day of July 2009

Attachment A

TRADE PRACTICES COMPLIANCE PROGRAM

Direct Savings Pty Ltd (ACN 108 117 479) (**Direct Savings**) will establish a Trade Practices Compliance Program (the **Compliance Program**) that complies with each of the following requirements:

1. Appointments

Within 1 month of the date of the Undertaking coming into effect Direct Savings 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. Direct Savings will ensure that, within 2 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V, Division 1A of the Act, in particular sections 65C and 65D.
- 2.2. Direct Savings will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 2.3. Within 14 days of completion of the training Direct Savings 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.

3. Staff Training

Direct Savings will cause all employees whose duties could result in them being concerned with conduct that may contravene Part V, Division 1A 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 Part V, Division 1A of the Act, in particular sections 65C and 65D.

4. Complaints handling

Within 3 months of the Undertaking coming into effect, Direct Savings will develop procedures for recording, storing and responding to trade practices complaints.

5. Product safety

- 5.1. Direct Savings will maintain up-to-date copies, at its business premises, of all (i) prescribed consumer product safety standards and (ii) prescribed consumer information standards under the Act that relate to products Direct Savings supplies.

- 5.2. Direct Savings will ensure that the products supplied that are subject to a (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard under the Act, comply with the relevant standard.
- 5.3. Direct Savings will maintain recall procedures that enable products supplied by Direct Savings that do not comply with a (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard under the Act to be efficiently and effectively withdrawn from the market and returned to Direct Savings.

6. Report to directors

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

7. Provision of Compliance Program to the ACCC

- 7.1. Within 3 months of date of this Undertaking coming into effect, Direct Savings will, at its own expense, provide the ACCC with a copies of each of the documents constituting the Compliance Program, including but not limited to:
 - 7.1.1. details of staff training to be provided in accordance with paragraph 3;
 - 7.1.2. a list of all prescribed consumer product safety standards and prescribed consumer information standards that relate to products Direct Savings currently supplies;
 - 7.1.3. details of how Direct Savings will ensure compliance with these standards;
 - 7.1.4. details of how Direct Savings will identify whether any new products it supplies are subject to a (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard;
 - 7.1.5. details of how Direct Savings will keep up-to-date with and comply with any amendments to existing standards, including declaration of new (i) prescribed consumer product safety standards or (ii) prescribed consumer information standards;
 - 7.1.6. an outline of the complaints handling system referred to in paragraph 4; and
 - 7.1.7. an outline of recall procedures referred to in paragraph 5.3.
- 7.2. Direct Savings will implement promptly and with due diligence any recommendations made by the Commission that are reasonably necessary to ensure that Direct Savings implements, maintains and continues to develop the Compliance Program in accordance with the requirements of this Undertaking.

8. Review

Direct Savings will, at its own expense, cause reviews of the Compliance Program (the **Review**) to be carried out in accordance with each of the following requirements:

- 8.1. **Timing of Reviews** –Direct Savings will cause a Review to be carried out at each of the following times:
 - 8.1.1. at the conclusion of 1 year after the commencement of the Undertaking;
 - 8.1.2. at the conclusion of 2 years and 6 months after commencement of the Undertaking; and
 - 8.1.3. when required by the Commission under paragraph 8.2.
- 8.2. **Additional Reviews** - In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Direct Savings shall, at its 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 in accordance with the terms of this Undertaking.
- 8.3. Direct Savings will ensure that each Review is completed within 1 month of the times specified in paragraph 8.1.
- 8.4. **Scope of the Review** –Direct Savings will ensure that each Review is broad and rigorous enough to:
 - 8.4.1. provide Direct Savings and the Commission with a supportable verification that Direct Savings has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Direct Savings; and
 - 8.4.2. provide the Report and opinions detailed at paragraph 9 below.
- 8.5. **Independence of Reviewer** - Direct Savings will ensure that each 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:
 - 8.5.1. did not design or implement the Compliance Program;
 - 8.5.2. is not a present or past staff member or director of Direct Savings or Direct Savings Stones Corner Pty Ltd, I-Life Factory Pty Ltd or Fang Long Tang Pty Ltd;
 - 8.5.3. has not acted and does not act for Direct Savings in any trade practices related matters;
 - 8.5.4. has not and does not act for or consult to Direct Savings or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 8.5.5. has no significant shareholding or other interests in Direct Savings.
- 8.6. **Evidence** - Direct Savings will use its best endeavors to ensure that each Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in Direct Savings' possession or control, including without limitation:

- 8.6.1. enquiries of any officers, employees, representatives, agents and stakeholders of Direct Savings;
- 8.6.2. documents created by Direct Savings' consultants, legal practitioners and accountants for use in the Compliance Program; and
- 8.6.3. all documents required to assess Direct Savings' compliance with any relevant (i) prescribed consumer product safety standard or (ii) prescribed consumer information standard under the Act.

9. Reporting

- 9.1. Direct Savings will use its best endeavours to ensure that the Reviewer sets out the findings of each Review in a Trade Practices Compliance Program Review Report (the **Report**), which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
 - 9.1.1. details of the evidence gathered and examined during the Review;
 - 9.1.2. the name and relevant experience of the person appointed as Compliance Officer;
 - 9.1.3. the Reviewer's opinion on whether Direct Savings has in place an effective Compliance Program (including staff training and complaints handling programs) that complies with the requirements of the Undertaking; and
 - 9.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of the Compliance Program.
 - 9.2. Direct Savings will ensure that each Report is completed and provided to Direct Savings within one month of completion of the Review.
 - 9.3. Direct Savings will cause the Report to be provided to the Commission within 14 days of its receipt from the Reviewer.
10. The Review may be conducted in conjunction with Direct Savings Stones Corner Pty Ltd and I-Life Factory Pty Ltd, and, if so, the ACCC will accept a collective Report submitted on behalf of each company.
 11. Direct Savings will implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure that Direct Savings maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
 12. If requested by the Commission, Direct Savings shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.