

TRADE PRACTICES ACT 1974

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

BY

APOLLO BICYCLE CO PTY LTD
ACN. 001 914 469

PERSONS GIVING THE UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Apollo Bicycle Co Pty Ltd (ACN 001 914 469) (**Apollo**) of 44 Parkhurst Drive, Knoxfield, Victoria under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. Apollo is a company incorporated in New South Wales and supplies bicycles and cycling accessories to retailers throughout Australia.
3. In October 2009, as part of national market place monitoring, ACCC staff purchased a Radius Racer X AL 12" bicycle (**the Radius Bicycle**) from a retailer located in Perth.
4. Section 65C 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 which do not comply with that standard.
5. Bicycles and children's bicycles are defined under the prescribed consumer product safety standard: *AS/NZS 1927:1998 Pedal bicycles - Safety requirements* (**the Standard**). A children's bicycle is defined under the Standard as a bicycle having a wheel base of between 640mm and 765mm.
6. The Standard requires, amongst other things, that all bicycles shall be:
 - (a) equipped with not less than two brakes, one acting on the front wheel and one on the rear wheel; and
 - (b) fitted with at least one front white reflector and at least one red rear reflector.
7. The ACCC formed the view that the Radius Bicycle was a children's bicycle within the meaning of the Standard but that it did not comply with the Standard as it was not equipped or fitted with:
 - (a) a front wheel brake;
 - (b) a front white reflector or a rear red reflector.
8. In November 2009 the ACCC raised its concerns with Apollo that the Radius Bicycle did not comply with the Standard.

9. Apollo informed the ACCC that between July 2008 and December 2009, it had supplied 458 Radius Bicycles to 133 retailers across Australia that did not comply with the Standard, but that it had ceased distributing the Radius Bicycle, and had advised retailers to stop selling the product.
10. Apollo admits that it has contravened section 65C of the TPA by supplying the Radius Bicycle without the components stated at paragraph 7.

COMMENCEMENT OF UNDERTAKING

11. This Undertaking comes into effect when:
 - (a) the undertaking is executed by Apollo; and
 - (b) the ACCC accepts the undertaking so executed.
12. Upon the commencement of this Undertaking, Apollo undertakes to assume the obligations set out in paragraphs 13 to 19 (below).

UNDERTAKINGS

Apollo undertakes for the purposes of section 87B of the TPA, that it will:

13. for a period of 3 years, in trade or commerce, not supply any bicycle to which the Standard applies unless the bicycle complies with the Standard;
14. within 14 days of this Undertaking coming into effect provide each of the 133 retailers, referred to in paragraph 9, the components set out at paragraph 7 in at least the same quantity as the number of Radius Bicycles sold to the retailer;
15. within 14 days of Undertaking coming into effect provide each of the 133 retailers referred to in paragraph 9 with a letter in the form and terms of **Annexure A**;
16. within 30 days of the commencement of this Undertaking cause a notice to be published on the website www.apollobikes.com for a continuous period of 30 days and in the form and terms of **Annexure B**. The notice will:
 - (a) be of a size that consists of approximately 40% of the images on screen;
 - (b) be viewable immediately on screen after the webpage is accessed; and
 - (c) not require further selection of hyperlinks or scrolling on the screen to be seen.
17. within 30 days of the commencement of this Undertaking, conduct an audit of its range of bicycles to identify any bicycles that do not comply with the Standard;
18. within 120 days of this Undertaking coming into effect, establish and implement a trade practices compliance program in accordance with the requirements set out in **Annexure C**, being a program designed to minimise

Apollo's risk of breaching section 65C of the TPA and to ensure awareness of its responsibilities and obligations in relation to the requirements of section 65C of the TPA; and


19. maintain the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect and provide a report to the ACCC confirming that the annual staff training referred to in paragraph 3.1 of the Compliance Program has been completed.

ACKNOWLEDGEMENTS

20. Apollo acknowledges that:
 - (i) the ACCC will make this undertaking publicly available by publishing it on the ACCC's public register of s.87B undertakings on its website;
 - (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications;
 - (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
 - (iv) a summary of the ACCC Compliance Program Review reports referred to in Annexure C of the Undertaking may be held with this Undertaking in the public register.

EXECUTED BY

Apollo Bicycle Co Pty Ltd (A.C.N. 100 914 469) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*



Signature

Simon Anthony Burke

Print name

Managing Director.

Office held

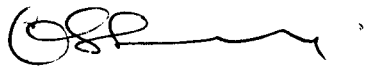
Signature

Print name

Office held

This *20* day of *January* 2010

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



Graeme Julian Samuel
Chairperson

This *29* day of *January* 2010

ANNEXURE A

[Insert Apollo Bicycle Co Pty Ltd logo]

Between July 2008 and November 2009, Apollo Bicycle Co Pty Ltd supplied you with the Radius Racer X AL 2008/09 and/or 2009/10 children's bicycle. The bicycles were not fitted with a front wheel brake, a front white reflector and a rear red reflector. These are required components under the mandatory product safety standard for pedal bicycles (AS/NZS 1927:1998).

It is a breach of section 65C of the *Trade Practices Act 1974* to supply a bicycle which does not comply with that standard.

If you have contact information for those of your customers who purchased the bicycles, please notify them that the bicycles are missing the components and offer to fit those components for the customer at no further cost to the customer. Apollo will be sending these components to you shortly.

Please maintain accurate records of the number of bicycles that you fit the components to.

Please display the attached notice at the point of sale in your store until 28 February 2010.

For further information please contact Apollo Bicycle Co Pty Ltd on (03) 9881 6600.



**Australian
Competition &
Consumer
Commission**

This corrective advertisement has been placed at the cost of Apollo Bicycle Co Pty Ltd pursuant to undertakings accepted by the Australian Competition and Consumer Commission.

Public Notice

Apollo Bicycle Co Pty Ltd

[Insert Apollo Bicycle Co Pty Ltd logo]

Between July 2008 and November 2009, we at Apollo Bicycle Co Pty Ltd supplied to retailers throughout Australia the "Radius Racer X A1 12" children's bicycle. The mandatory product safety standard for pedal bicycles AS/NZS 1927:1998 (**the Mandatory Standard**) defines a children's bicycle as a bicycle having a wheel base of between 640mm and 765mm. The Standard requires, amongst other things, that bicycles are to have:

- (a.) a front wheel brake;
- (b.) a front white reflector; and
- (c.) a red rear reflector.

It is a breach of section 65C of the *Trade Practices Act 1974* to supply a product which does not comply with a mandatory standard.

Apollo advises that Radius Racer X A1 12" children's bicycle's supplied between July 2008 and November 2009 did not have the above components and did not comply with the Mandatory Standard.

If you have purchased the Radius Racer X A1 12" bicycle please return it to your Apollo retailer who will arrange for the above components to be fitted at no expense to you.

For further information please contact Apollo Bicycle Co Pty Ltd on (03) 9881 6600



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ANNEXURE B

Public Notice

Apollo Bicycle Co Pty Ltd

[Insert Apollo Bicycle Co Pty Ltd logo]

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(a.) a front wheel brake; (b.) a front white reflector; and (c.) a red rear reflector

It is a breach of section 65C of the *Trade Practices Act 1974* to supply a product which does not comply with a mandatory standard.

Apollo advises that Radius Racer X A1 12" children's bicycle's supplied between July 2008 and November 2009 did not have the above components and did not comply with the Mandatory Standard.

If you have purchased the Radius Racer X A1 12" bicycle please return it to your Apollo retailer who will arrange for the above components to be fitted at no expense to you.

For further information please contact Apollo Bicycle Co Pty Ltd on (03) 9881 6600.



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ANNEXURE C

TRADE PRACTICES COMPLIANCE PROGRAM

Apollo Bicycle Co Pty Ltd (**Apollo**) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

1. Appointment

- 1.1. Within one month of the date of the Undertaking coming into effect Apollo 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. Apollo will ensure within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, the Compliance Officer will attend practical trade practices training focusing on section 65C of the *Trade Practices Act 1974 (TPA)*.
- 2.2. Apollo will ensure that the training referred to in paragraph 2.1 above is administered by a suitably qualified, compliance professional with expertise in trade practices law.
- 2.3. Apollo will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 2.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

3. Staff Training

- 3.1. Apollo will cause all of its employees whose duties could result in them being concerned with conduct that may contravene section 65C of the TPA to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified, compliance professional with expertise in trade practices law, that focuses on section 65C of the TPA.
- 3.2. Apollo will provide the ACCC with a written report confirming that the annual staff training referred to in paragraph 3.1 has been completed.

4. Complaints handling

- 4.1. Apollo will ensure within 2 months of this Undertaking coming into effect procedures for recording, storing and responding to trade practices complaints are developed.
- 4.2. Apollo will ensure within 2 months of this Undertaking coming into effect that the ACCC is provided with an outline of the complaint handling system developed.

5. Product safety

- 5.1. Apollo will 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 it supplies.

- 5.2. Apollo will ensure that the products supplied by it that are subject to a prescribed consumer product safety and/or information standard under the TPA, comply with the relevant standard.
- 5.3. Apollo will maintain recall procedures that enable products supplied by it that do not comply with prescribed consumer product safety and/or information standards under the TPA to be efficiently and effectively withdrawn from the market and returned to Apollo.

6. **General**

- 6.1. If requested by the ACCC, Apollo 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.
- 6.2. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Apollo shall, at its own expense and if requested by the ACCC, cause a review to be conducted and cause the resulting review report to be provided to the ACCC.