

FILE No C2010/100-02
DOC D10/3642533

TRADE PRACTICES ACT 1974

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

by

ANE Furniture Pty Ltd

ACN 108 246 760

Persons giving this undertaking

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by ANE Furniture Pty Ltd, ACN 108 246 760 (ANE), Unit B, 120 Hassall Street, Wetherill Park NSW 2164 for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**).

Background

- (2) ANE is a manufacturer and importer of household furniture, including bunk beds. It sells to retailers throughout Australia with the products being sold for on-supply to consumers.
- (3) Consumer Protection Notice 1 of 2003 (**the Bunk CPN**) creates a mandatory standard governing bunk beds supplied in Australia.
- (4) Section 65C 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 which are subject to a prescribed consumer product safety standard but do not comply with that standard.
- (5) ANE had arranged for testing of its bunk beds known as the Menzies and Marina bunks against the Bunk CPN. The testing for the Menzies Bunk was also relevant to another bunk bed known as the Casey Bunk owing to its similar design. As a result of those test results ANE made certain modifications to the above listed bunk beds but ultimately did not resubmit those versions for further testing.
- (6) In February 2009, officers from the ACCC conducted a survey of bunk beds for compliance with the Bunk CPN. A specimen of the Marina Bunk was purchased for further testing. As a result the ACCC formed the view that that Marina Bunk failed to comply with the Bunk CPN, and that the failures rendered the bed unsafe.

Allen Wang

- (7) The ACCC immediately contacted ANE to inform them of the view formed. It was during the course of these contacts the ACCC became aware of the supply of the Menzies and Casey Bunks. The ACCC formed the view the Menzies and Casey Bunks did not comply with the Bunk CPN, and that the failures rendered those bunks unsafe. As a result ANE then commenced voluntary recalls of all three Bunks. Further details for the Menzies and Casey Bunks can be found on www.recalls.gov.au, PRA number 2009/10966. Further details for the Marina Bunks can be found on www.recalls.gov.au, PRA number 2009/10944.
- (8) The ACCC considers that the supply by ANE of the Menzies, Casey and Marina Bunks did not comply with the Bunk CPN contravened section 65C of the Act.
- (9) ANE admits that the conduct described at paragraph 8 above contravened section 65C of the Act.

Commencement of undertaking

- (10) This undertaking comes into effect when:
 - (i) the undertaking is executed by ANE; and
 - (ii) the ACCC accepts the undertaking so executed.
- (11) Upon the commencement of this undertaking, ANE undertakes to assume the obligations set out in paragraph 12 below.

Undertakings

- (12) ANE undertakes for the purposes of section 87B of the Act that it will:
 - (i) establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure A**, being a program designed to minimise ANE's risk of future breaches of section 65C of the Act and to ensure its awareness of the responsibilities and obligations in relation to the requirements of Division 1A of Part V of the Act;
 - (ii) 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; and
 - (iii) provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure A**.

Acknowledgments

- (13) ANE acknowledges that:
 - (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website;

Allen Wang

- (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.

Executed by

ANE Pty Ltd ACN 108 246 760 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

.....*Allen Wang*.....
Secretary/Director

.....*Allen Wang*.....
Director

This...*10th*...day of...*June*...2010

OR

The Common Seal of ANE Pty Ltd ACN 108 246 760 was affixed in the presence of:

.....
Secretary/Director

.....
Director

This.....day of.....2010

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

.....*Graeme Julian Samuel*.....

Graeme Julian Samuel
Chairman

This...*2nd*...day of...*July*...2010

Annexure A

TRADE PRACTICES COMPLIANCE PROGRAM

ANE will establish a Trade Practices Compliance Program that complies with each of the following requirements:

1. Training

- 1.1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, the Director of ANE and any sales staff currently employed or employed whilst the Undertaking is in effect will attend practical trade practices training focusing on Division 1A of Part V of the Act, in particular sections 65C and 65R and any prescribed consumer product safety standards and prescribed consumer information standards applying to goods ANE supplies.
- 1.2. ANE will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. ANE will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

2. Complaints handling

2.1. ANE will:

- 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within three months of this Undertaking coming into effect;
- 2.1.2. provide the Commission with an outline of the complaint handling system developed within three months of the Undertaking coming into effect; and
- 2.1.3. ensure that any allegations that either the recall is not being conducted effectively or that a product supplied by ANE which is subject to a prescribed consumer product safety standard or prescribed consumer information standard has caused injury are escalated and investigated appropriately. All such complaints are to be notified to the ACCC Product Safety Hazard Response Branch within two days of receipt. This obligation will come into effect when the Undertaking comes into effect.

Dillon Wang

3. Provision of documents

- 3.1. If requested by the Commission, ANE 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.

4. Product safety

- 4.1. ANE 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 ANE supplies.
- 4.2. ANE will ensure that the products supplied that are subject to a prescribed safety and/or information standard under the Act, comply with the relevant standard. In particular ANE will:
 - 4.2.1. within one month of the commencement of this undertaking and at least twice annually thereafter, examine or cause to be examined at its own cost a sample of those products to ensure compliance with the prescribed safety and/or information standards under the Act;
 - 4.2.2. if necessary, modify the design of those products to ensure that those products, once manufactured, comply with the relevant standard;
 - 4.2.3. within one month of the commencement of this undertaking inspect a sample of all products which require, as part of the mandatory standard, labels or markings to comply with same are permanently and indelibly so labelled or marked, and will at least twice annually examine a sample of those products to ensure the labels or marks are present and correctly placed; and
 - 4.2.4. keep records of this examination, inspection and any redesign process for the duration of the Undertaking and on each occasion of any examination, inspection and any redesign process is undertaken provide written advice containing all details to the ACCC within 7 days of it occurring . Details provided to the ACCC should include total number of the items held in stock, the number sampled, the method of testing to ensure compliance with the relevant standard, compliance or otherwise with the relevant standard and any remedial action taken.
- 4.3. ANE at its own expense will within one month of the commencement of this undertaking develop and maintain recall procedures that enable products supplied by ANE that do not comply with prescribed safety and/or information standards under the Act to be efficiently and effectively withdrawn from the market and returned to ANE. ANE is to provide a copy of these recall procedures to the ACCC within 7 days of their development.

Allen Wang

4.4. ANE will continue to act on the current recalls for the Menzies, Casey and Marina Bunks until the recall is completed by satisfying the ACCC that all reasonable steps have been undertaken. Prior to completion of the recall a monthly report is to be supplied to the ACCC detailing all recall action taken and what progress is being made toward a satisfactory conclusion.

Allen Wang