

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Outdoor Supacentre Pty Ltd ACN 609 212 624.

## 1. Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Outdoor Supacentre Pty Ltd ACN 609 212 624 (trading as **4WD Supacentre**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

## 2. Background

- 2.1 4WD Supacentre is a retailer of four-wheel drive vehicle and camping accessories. It sells products online, in company stores, and to dealers.
- 2.2 At various times from 1 November 2018 until 31 January 2019, 4WD Supacentre offered the following products for sale on its website (<https://www.4wdsupacentre.com.au/>) using advertising that indicated that the products were previously supplied at a particular price (Previous Price) but were currently available for a lower price (Sale Price):
- i. Adventure Kings Big Daddy Deluxe Double Swag 400GSM Canvas;
  - ii. Gasmate Voyager Portable BBQ;
  - iii. Adventure Kings Camp Oven/Stove;
  - iv. Inflatable Stand Up Paddleboard; and
  - v. Adventure Kings 120W Portable Solar Blanket (together, the **Five Products**).
- 2.3 This was in circumstances where 4WD Supacentre did not advertise the Five Products for sale at the Previous Price during the three-month period before making each advertisement. Through this conduct, 4WD Supacentre represented to consumers that:
- i. if they purchased one of the Five Products during the time the particular advertisement was made, they could achieve a saving in the amount of the difference between the Previous Price and the Sale Price for that product, when in fact no such saving would be achieved; and
  - ii. if they had purchased one of those Five Products from the website during a reasonable period before the particular advertisement was made, they would have paid the Previous Price, when that was not the case.
- 2.4 The ACCC is concerned that, through the conduct described at paragraphs 2.2 and 2.3, 4WD Supacentre contravened section 29(1)(i) of the Australian Consumer Law (ACL), contained in Schedule 2 of the CCA, relating to false and misleading representations with respect to price.
- 2.5 In response to the ACCC's investigation, 4WD Supacentre:
- (a) acknowledges that its conduct was likely to have contravened section 29(1)(i),
  - (b) has paid five infringement notices under section 134A of the CCA in the total amount of \$63,000, and
  - (c) has offered this Undertaking to the ACCC.

## 3. Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by 4WD Supacentre; and
  - (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 3.2 Upon the commencement of this Undertaking, 4WD Supacentre undertakes to assume the obligations set out in paragraphs 4.1, 4.2 and 4.3 for the purposes of section 87B of the CCA.

#### 4. Undertaking

*Cease and refrain from further false or misleading representations*

4.1 4WD Supacentre undertakes that it will not, in trade or commerce,

- (a) advertise any product using two price comparison advertising with a higher price (**Higher Price**) and a lower price (**Lower Price**) in a way which suggests that the product was previously sold or advertised for sale at the Higher Price by 4WD Supacentre if 4WD Supacentre did not sell or advertise that product for sale at the Higher Price for a reasonable period prior to making that advertisement; and
- (b) advertise any product using two price comparison advertising with a Higher Price and a Lower Price if the Higher Price is based on the price of a non-identical product, unless 4WD Supacentre prominently discloses this fact and identifies the non-identical product in the advertisement.

#### *Corrective Notice*

4.2 4WD Supacentre undertakes that within 30 days of the Commencement Date, 4WD Supacentre will place a copy of the corrective notice set out in Annexure A on the 4WD Supacentre website, including the mobile version of the website, and maintain it on the website for 30 days. The notice is to be:

- (a) located at the URL "<https://www.4wdsupacentre.com.au/corrective>"; and
- (b) accessible by a prominent and at least 12 point font one-click link, displayed on the homepage of the 4WD Supacentre website directly underneath the top navigation menu and, if a left hand navigation panel appears on the website, to the right hand side of that panel, in the form set out in Annexure B.

#### *Australian Consumer Law compliance program*

4.3 4WD Supacentre undertakes that within three months of the Commencement Date of this Undertaking, 4WD Supacentre will:

- (a) review all 4WD Supacentre advertising and promotional material to ensure 4WD Supacentre does not make any false or misleading representations as to the previous or current price of products or as to the saving or discount available to consumers who purchase such products;
- (b) establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in "Annexure C", being a program designed to minimise 4WD Supacentre's risk of future breaches of section 29 of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of section 29;
- (c) maintain and continue to implement the Compliance Program for a period of three years from the Commencement Date.

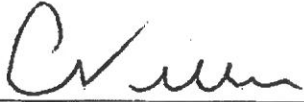
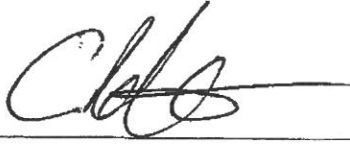
#### 5. Acknowledgments

5.1 4WD Supacentre acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

### Executed as an Undertaking

Executed by Outdoor Supacentre Pty Ltd ACN 609 212 624 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director
Name of director	Name of director
Charles John Vella	Christian Nathan Rolfe
Date 11/11/19	Date 11/11/19

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

13 Jan 2020

Date

and signed on behalf of the Commission:

A/g  
Chair



13. 1. 20

Date

## Corrective Notice

### False or Misleading advertising by 4WD Supacentre

At various times from at least 1 November 2018 until 31 January 2019, 4WD Supacentre advertised the following products for sale on its website using advertisements that may have indicated the products were previously advertised at a particular price (the 'higher price') but were available for sale at a lower price:

- (i) Adventure Kings Big Daddy 'Deluxe' Double Swag
- (ii) Gasmate Voyager Portable BBQ
- (iii) Adventure Kings Camp Oven/Stove
- (iv) Inflatable Stand Up Paddleboard
- (v) Adventure Kings 120W Portable Solar Blanket

In fact, 4WD Supacentre did not sell or advertise the products for sale at their higher prices at any time during the three months prior to making each advertisement.

The Australian Competition and Consumer Commission (ACCC) investigated this conduct and formed the view that these advertisements involved 4WD Supacentre making false or misleading representations with respect to the price of goods, contrary to section 29(1)(i) of the Australian Consumer Law. The ACCC concluded that the advertisements suggested to consumers that on particular dates if they purchased particular products they could achieve savings of particular amounts, when in fact no such savings existed on those dates.

4WD Supacentre acknowledges that its conduct was likely to mislead consumers and expresses its sincere apologies to any customers affected by this conduct. 4WD Supacentre also acknowledges that the ACCC previously corresponded with it regarding false or misleading advertising.

To minimise the risk of this type of advertising happening again, 4WD Supacentre has undertaken to assume a number of obligations under a court enforceable undertaking accepted by the ACCC, which can be viewed at [www.accc.gov.au](http://www.accc.gov.au). As part of the undertaking, 4WD Supacentre has agreed to refrain from making similar false and misleading advertisements in the future, issue this corrective notice, and implement a compliance program.

If you have any queries about this notice or about a 4WD Supacentre product you have purchased, please contact us through <https://service.4wdsupacentre.com.au/sales>



This notice has been placed by 4WD Supacentre at the request of the ACCC.

**Annexure B**

**CORRECTIVE NOTICE  
FALSE OR MISLEADING ADVERTISING**

[Click here for further information](#)

## **Annexure C**

### **COMPETITION AND CONSUMER COMPLIANCE PROGRAM**

#### **LEVEL 1**

Outdoor Supacentre Pty Ltd (4WD Supacentre) will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

#### **Training**

1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for 3 years, the Executive Chairman, Chief Executive Officer, and Marketing Manager of 4WD Supacentre will attend practical training focusing on Part 3-1 of the Australian Consumer Law, contained within Schedule 2 to the Competition and Consumer Act 2010 (the CCA).
2. 4WD Supacentre will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (**the Trainer**).

#### **Complaints handling**

3. Within 3 months of this Undertaking coming into effect, 4WD Supacentre will develop procedures for recording, storing and responding to competition and consumer law complaints.

#### **Provision of Compliance Program documents to the ACCC**

4. 4WD Supacentre will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years.
  5. If requested by the ACCC within 5 years of the Commencement Date of the Undertaking 4WD Supacentre will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
    - 5.1.1. a written statement or certificate from the Trainer who conducts the training referred to in paragraph 1, verifying that such training has occurred; and
    - 5.1.2. an outline of the complaints handling system referred to in paragraph 3
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