

## Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Riff Raff Baby Pty Ltd ABN 28 619 798 613

### 1. Person giving the Undertaking

- 1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Riff Raff Baby Pty ABN 28 619 798 613 (**Riff Raff**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

### 2. Background

#### *Riff Raff*

- 2.1 Riff Raff is an online retailer that sells a range of infant sleep toys, which currently include Clover, Riff, Raffy, Kirra, Bandit and Banjo characters, (collectively the **Sleep Toys**), to consumers in Australia. Riff Raff also retail additional product lines including 'bedtime books' and teethers.
- 2.2 The Sleep Toys have a removable sound box which plays a lullaby and white noise. All 6 variations are configured as a plush animal head with a small blanket body.
- 2.3 Riff Raff has approximately 84,000 followers on Facebook and 89,000 on Instagram. Riff Raff distributes user generated content, such as videos and images on its social media channels.

#### *Safe sleep advice*

- 2.4 At the time of the relevant conduct, advocacy and health agencies including Red Nose (Australia's leading authority on safe sleep) advised not to place toys or other objects, particularly soft toys, in a cot with an infant under 7 months of age. These products can cover an infant's nose and mouth and interfere with breathing, leading to a risk of fatal suffocation. This is widely recognised as best practice health advice.
- 2.5 Sleep aid toys are generally malleable toys that are marketed as having a calming effect on babies and children. Common features which may be integrated into the toys include lullabies, white noise sounds and a night light. Sleep aid toys are not inherently dangerous, but incorrect use, such as leaving them in a cot with a sleeping infant, can present a risk of suffocation.

### 3. The ACCC's concerns

- 3.1 From at least 28 February 2023 until at least 8 June 2023, Riff Raff, in trade or commerce, and in connection with the supply, possible supply and/or promotion of the Sleep Toys, included photographs and videos on its website [<https://au.riffraffbaby.com/>] and social media channels which depicted infants sleeping unsupervised in cots near or beside Riff Raff Sleep Toys (**Unsupervised Infant Images**). The ACCC considers that it is likely these Unsupervised Infant Images conveyed a representation that the Sleep Toys were safe to leave unsupervised in an infant's sleeping environment from birth (the **safe for sleep representation**), particularly when combined with:
- (a) prominent statements on its website such as "*designed with safety in mind*";
  - (b) prominent statements on its Facebook such as "*Did you introduce your Riff Raff from birth? If you didn't..., do you wish you had?*"; and
  - (c) prominent statements on its Instagram such as "*We always recommend the introduction of your Riff Raff Sleep Toy from birth where possible.*"
- 3.2 The safe for sleep representation is contrary to established, recommended public health advice in place at the time that toys or other objects, particularly soft toys, should not be placed in a sleeping environment with an infant under seven months of age and as such, the ACCC considers Riff Raff:
- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the Australian Consumer Law (**ACL**), contained in Schedule 2 to the CCA;
  - (b) made false or misleading representations that the Sleep Toys had performance characteristics, uses and/or benefits in contravention of section 29(1)(g) of the ACL; and
  - (c) engaged in conduct that was liable to mislead the public as to the nature, characteristics and/or suitability for their purpose of the Sleep Toys, in contravention of section 33 of the ACL. The ACCC considers that the representations on the Riff Raff website, Facebook and Instagram pages are likely to falsely lead consumers to believe it is safe to use these Sleep Toys for unsupervised sleep with an infant, posing a significant safety risk, including possible suffocation.

#### 4. Resolution and Admission

- 4.1 Riff Raff admits that it is likely to have contravened sections 18, 29(1)(g) and/or 33 of the ACL and has provided this Undertaking to the ACCC to address those concerns.
- 4.2 Riff Raff has also paid 8 Infringement Notices, with a penalty of \$16,500 each (amounting to \$132,000 in total) issued by the ACCC under section 134A of the CCA for 8 separate alleged contraventions of s29(1)(g) of the ACL relating to the safe for sleep representation.

#### 5. Commencement of this Undertaking

- 5.1 This Undertaking comes into effect when:
  - (a) this Undertaking is executed by Riff Raff, and
  - (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 5.2 The Undertaking has effect for 3 years from the Commencement Date (**Term**).
- 5.3 Upon the Commencement Date, Riff Raff undertakes to assume the obligations set out in Section 6 of this Undertaking below for the purposes of section 87B of the CCA.

#### 6. Undertaking

##### *Safe for sleep representation*

- 6.1 Riff Raff undertakes that it will remove all Unsupervised Infant Images from its website (including user generated content), Facebook and Instagram posts within 7 days of the Commencement Date.
- 6.2 Riff Raff undertakes that it will not, in trade or commerce, or in connection with the supply, possible supply and/or promotion of the Sleep Toys:
  - (a) make the safe for sleep representation, including on Riff Raff's website or social media channels; or
  - (b) represent the Sleep Toys in any manner that is inconsistent with established health advice published by Red Nose, at [rednose.org.au](http://rednose.org.au), regarding safe infant sleeping practices (**safe sleep guidance**) at the time of executing this Undertaking (and as updated from time to time).

*ACL compliance program*

6.3 Riff Raff undertakes that it will:

- (a) establish and implement a Consumer Law Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure A**, being a program designed to minimise Riff Raff's risks of future breaches of the ACL and to ensure awareness of its obligations under the ACL;
- (b) maintain and continue to implement the Compliance Program for the Term of this Undertaking; and
- (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with this Undertaking, including **Annexure A**.

*Corrective actions*

6.4 Riff Raff undertakes that within 21 days of the Commencement Date, it will, at its own expense, undertake the following steps to promote use of the Sleep Toys in accordance with current safe sleep guidance:

- (a) amend the homepage and each Sleep Toy product page on the Riff Raff website such that, for a period of not less than 6 months after the Commencement Date, each page includes:
  - (i) a prominent image or images on that page illustrating the correct way a Sleep Toy should be used with an infant under 7 months old in a sleeping environment, being to have the toy either placed outside the sleeping environment, or securely fixed (tethered) to the sleeping environment outside the potential reach of the infant;
  - (ii) a prominent warning in red stating that Sleep Toys should not be left unattended in a sleeping environment with infants under 7 months; and
  - (iii) a prominent warning to always follow safe sleep guidelines.
- (b) issue posts on the Riff Raff Facebook and Instagram social media channels that include the text at **Annexure B** and maintain these posts for at least 60 consecutive days;
- (c) send via email a copy of the corrective notice at **Annexure C** to all consumers that purchased or purchase the Sleep Toys between 22 November 2022 and the date that is 60 days after the corrective measures described in paragraph 6.4(a) are implemented. This email will include an image of the relevant Sleep Toy purchased and "IMPORTANT: SAFETY MESSAGE" in the email subject line;

- (d) on all Sleep Toys manufactured after the Commencement Date, include a warning label on the product stating words to the effect of "*Do not leave in cot with baby under 7 months*"; and
- (e) ensure that the packaging for all Sleep Toys packaged after the Commencement Date will contain, or will include an insert which will contain:
  - (i) a prominent warning in red which clearly states that the sleep toy should not be left unattended in a sleeping environment with an infant under the age of 7 months; and
  - (ii) a QR code which links to various resources, including Red Nose, Centre for Disease Control and Prevention (USA) and National Health Service (UK) safe sleep resources.

6.5 Should relevant safe sleep guidance be updated during the Term, Riff Raff undertakes to review its obligations under this Undertaking (including the actions outlined at paragraph 6.4) and take steps to ensure that any representations it makes regarding safe sleep guidance are updated, as necessary and within a reasonable time, to reflect any new safe sleep guidance.

## **7. ACCC Enquiries**

7.1 For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Riff Raff, and Riff Raff will respond to such enquiries at its own expense within a reasonable time.

## **8. Acknowledgements**

8.1 Riff Raff 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**

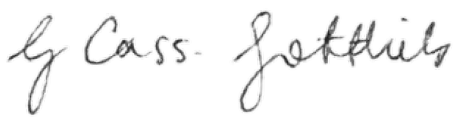
Executed by Riff Raff Baby Pty ABN 28 619 798 613 pursuant to section 127(1) of the *Corporations Act 2001* by:


Signature of director
Emma Kruger
Name of director (print)
27th November 2023
Date

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

Date 28 November 2023

and signed on behalf of the Commission:

Chair 

Date 28 November 2023

## ANNEXURE A CONSUMER COMPLIANCE PROGRAM

Riff Raff Baby Pty Ltd (**Riff Raff**) will establish a consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

### Appointments

1. Within 2 months of the undertaking under s 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by Riff Raff to the ACCC (**Undertaking**) coming into effect (**Commencement Date**), Riff Raff will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance as responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).
2. Within 2 months of the Commencement Date, Riff Raff will appoint a suitably qualified, internal or external, compliance professional with expertise in consumer law (**Compliance Advisor**).

### Risk Assessment

3. Riff Raff will instruct the Compliance Advisor to conduct a consumer law risk assessment within 3 months of being appointed as the Compliance Advisor (**Risk Assessment**) and to provide a written report outlining their findings (**Risk Assessment Report**) to Riff Raff within 2 months of conducting the Risk Assessment.
4. Riff Raff will use its best endeavours to ensure that the Risk Assessment Report:
  - 4.1. identifies the areas where Riff Raff is at risk of breaching the Australian Consumer Law (**ACL**) being schedule 2 to the CCA;
  - 4.2. assesses the likelihood of these risks occurring;
  - 4.3. identifies where there may be gaps in Riff Raff's existing procedures for managing these risks; and
  - 4.4. provides recommendations for any action to be taken by Riff Raff based on the Risk Assessment.

## **Compliance Policy**

5. Riff Raff will, within 2 months of the Commencement Date, issue a policy statement outlining Riff Raff's commitment to compliance with the ACL (**Compliance Policy**).
6. Riff Raff will ensure the Compliance Policy:
  - 6.1. contains a statement of commitment to compliance with the ACL;
  - 6.2. contains an outline of how commitment to ACL compliance will be realised within Riff Raff;
  - 6.3. contains a requirement for all staff to report any Compliance Program related issues and ACL compliance concerns to the Compliance Officer; and
  - 6.4. contains a clear statement that Riff Raff will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.

## **Complaints Handling System**

7. Within 4 months of the Commencement Date, Riff Raff will develop and implement procedures for identifying, classifying, storing and responding to consumer law complaints (**Complaints Handling System**).
8. Riff Raff will ensure that staff and customers are made aware of the Complaints Handling System.

## **Staff Training and Induction**

9. Riff Raff will ensure that the Compliance Program includes a requirement for directors, officers, employees, representatives and agents of Riff Raff, whose duties could result in them being concerned with conduct that may contravene the ACL to undergo regular (at least once a year) training that focuses on ACL compliance (**Staff Training**).
10. Riff Raff will ensure that the Compliance Program includes a requirement that awareness of Riff Raff' obligations under the ACL forms part of the induction of all new directors, officers, employees, representatives and agents whose duties could result in them being concerned with conduct that may contravene the ACL (**Induction**).
11. Riff Raff will ensure that the Staff Training and Induction is conducted by a suitably qualified compliance professional or legal practitioner with expertise in consumer law.



## **Product Safety Compliance**

12. Riff Raff will:

- 12.1. maintain up-to-date copies, at its business premises, of all mandatory safety and information standards made or declared under the ACL that relate to products that Riff Raff supplies (**Standards**); and
- 12.2. ensure that products supplied that are subject to one or more Standards, comply with the relevant Standard.

## **Product Safety Procedures**

13. Riff Raff will ensure that the Compliance Program includes procedures that enable it to address, in a timely manner, any safety issues that it becomes aware of that affect the safe use of the products it supplies (**Product Safety Procedures**), whether by way of:

- 13.1. actions unrelated to Riff Raff products themselves (e.g., amending instructions in user manuals and websites as appropriate); and/or
- 13.2. recall corrective actions involving Riff Raff products, ranging from issuing an immediate, direct and prominent safety alert or warning to consumers, through to the efficient and effective withdrawal of the relevant product from the market, including notification to the Commonwealth Minister in accordance with obligations under section 128 of the ACL, as appropriate to the circumstances.

## **Reports to Riff Raff Director/s**

14. Riff Raff will ensure that the Compliance Officer reports to Riff Raff Director/s every 6 months on the continuing effectiveness of the Compliance Program.

## **Compliance Review**

15. Riff Raff will, at its own expense, cause an annual review of the Compliance Program (**Review**) to be carried out in accordance with each of the following requirements:

- 15.1. **Scope of Review** – the Review should be broad and rigorous enough to provide Riff Raff and the ACCC with:
  - 15.1.1. verification that Riff Raff has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 14 of this Annexure; and
  - 15.1.2. the Compliance Reports detailed at paragraph 16 of this Annexure.
- 15.2. **Independence of Review** – Riff Raff will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in

consumer law (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

- 15.2.1. did not design or implement the Compliance Program;
- 15.2.2. is not a present or past staff member or director of Riff Raff;
- 15.2.3. has not acted and does not act for, and does not consult and has not consulted to, Riff Raff in any competition and consumer law matters, other than performing Reviews; and
- 15.2.4. has no significant shareholding or other interests in Riff Raff.

15.3. **Evidence** – Riff Raff will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Riff Raff's possession or control, including without limitation:

- 15.3.1. the ability to make enquiries of any officers, employees, representatives and agents of Riff Raff;
- 15.3.2. documents relating to the Risk Assessment, including the Risk Assessment Report;
- 15.3.3. documents relating to Riff Raff's Compliance Program, including documents relevant to Riff Raff's Compliance Policy, Complaints Handling System, and Staff Training and Induction; and
- 15.3.4. any reports made by the Compliance Officer to Riff Raff Director/s regarding Riff Raff's Compliance Program.

15.4. Riff Raff will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed annually for 3 years.

### **Compliance Report**

16. Riff Raff will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer of Riff Raff (**Compliance Report**):

- 16.1. whether the Compliance Program of Riff Raff includes all the elements detailed in paragraphs 1 to 14 of this Annexure and if not, what elements need to be included or further developed;
- 16.2. whether the Compliance Program adequately covers areas identified in the Risk Assessment, and if not, what needs to be further addressed;

- 16.3. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
- 16.4. whether Riff Raff's Complaints Handling System is effective, and if not, what aspects need to be further developed; and
- 16.5. whether there are any material deficiencies in Riff Raff's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**)<sup>1</sup>, and if so, recommendations for rectifying the Material Failure.

### **Riff Raff's Response to Compliance Report**

17. Riff Raff will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
  - 17.1. provides the Compliance Report to Riff Raff Director/s; and
  - 17.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to Riff Raff Director/s identifying how Riff Raff can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
18. Riff Raff will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

### **Reporting Material Failures to the ACCC**

19. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Riff Raff will:
  - 19.1. provide a copy of the Compliance Report to the ACCC within 7 days of Riff Raff Director/s receiving the Compliance Report; and
  - 19.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
  - 19.3. otherwise outline the steps that Riff Raff proposes to take to implement the recommendations and inform the ACCC once those steps have been implemented.

<sup>1</sup> Material Failures are intended to include non-trivial failures that are ongoing or continue for a significant period of time to:

- incorporate a requirement of the Undertaking in the design of the Compliance Program, (e.g. if the Complaints Handling System did not provide a mechanism for responding to complaints); or
- comply with a fundamental obligation in the implementation of the Compliance Program (e.g. if no Staff Training has been conducted within the Annual Review period).

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

20. Riff Raff will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 5 years.
21. If requested by the ACCC during the period of 5 years following the Commencement Date, Riff Raff will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
  - 21.1. the Compliance Policy;
  - 21.2. the Risk Assessment Report;
  - 21.3. an outline of the Complaints Handling System;
  - 21.4. Staff Training and Induction materials;
  - 21.5. an outline of the Product Safety Procedures;
  - 21.6. the Compliance Report that has been completed at the time of the request;  
and
  - 21.7. copies of the reports to Riff Raff Director/s referred to in paragraphs 14 and 16 of this Annexure.

### **ACCC Recommendations**

22. Riff Raff will promptly and fully implement any recommendations that the ACCC may make that are reasonably necessary to ensure that Riff Raff maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

## **ANNEXURE B CORRECTIVE NOTICE – SOCIAL MEDIA**

### **IMPORTANT: Safety message about Riff Raff sleep toys**

Riff Raff wishes to inform consumers that previous promotion of its sleep toys, (including the Clover, Riff, Raffy, Kirra, Bandit & Banjo characters) (sleep toys) may have suggested that these products were safe to use with infants in an unsupervised sleeping environment from birth.

Current recommended health advice indicates you should not place soft toys or other soft objects in a sleeping environment with an infant under 7 months of age. These products can cover an infant's nose and mouth and interfere with breathing, and pose a risk of fatal suffocation.

As shown in the photo below, Riff Raff sleep toys have been designed with a strap. This should be used to secure your toy, either outside the sleeping environment or to the side of the sleeping environment. The sleep toys should be away from an infant's potential reach whenever the toy will be left with an infant unsupervised (such as when they are going to sleep).



Following concerns raised by the ACCC, we have committed to change our promotional images and include more prominent warnings to avoid creating any misleading impression about the safety of leaving soft toys or other soft objects in a sleeping environment with an infant under 7 months of age.

These commitments are outlined in a recent enforceable undertaking that Riff Raff made to the ACCC, available here [*insert hyperlink to s 87B undertaking on the ACCC's online undertakings register*].

For further information on infant safe sleep visit the [Red Nose](#) website.

If you have any concerns regarding this notice, please contact us on [*contact for Riff Raff*].

## ANNEXURE C CORRECTIVE NOTICE – CUSTOMER COMMUNICATION

### **IMPORTANT: Safety message about your purchase of Riff Raff sleep toys**

You recently purchased a Riff Raff sleep toy. At the time you made your purchase, some of the promotional images of our sleep toys, (including the Clover, Riff, Raffy, Kirra, Bandit & Banjo characters) (sleep toys) may have suggested that these products were safe to use with infants in an unsupervised sleeping environment from birth.

Current recommended health advice indicates you should not place soft toys or other soft objects in a sleeping environment with an unsupervised infant under 7 months of age. These products can cover an infant's nose and mouth and interfere with breathing, and pose a risk of fatal suffocation.

As shown in the photo below, Riff Raff sleep toys have been designed with a strap. This should be used to secure your toy, either outside the sleeping environment or to the side of the sleeping environment. The sleep toys should be away from an infant's potential reach whenever the toy will be left with an infant unsupervised (such as when they are going to sleep).



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