



UNDERTAKING
Australian Consumer Law (SA)
Section 218

Undertaking to the Commissioner for Consumer Affairs given for the purposes of section 218 of the *Australian Consumer Law (SA)* by:

**Email Pty Ltd, ACN 605 494 997, trading as Color Life and
Mr Shaoming Zhang**

1. PERSONS GIVING THIS UNDERTAKING

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs (the Commissioner) by Email Pty Ltd and Shaoming Zhang, in the State of South Australia for the purposes of section 218 of the *Australian Consumer Law (SA)* (the ACL), which is adopted by the *Fair Trading Act 1987*.

2. BACKGROUND

- 2.1. Email Pty Ltd, ACN 605 494 997, is incorporated under the *Corporations Act 2001*. Email Pty Ltd trades under the business name "Color Life".
- 2.2. Shaoming Zhang is a current director of the company Email Pty Ltd.
- 2.3. Email Pty Ltd supplies a range of goods, including furniture, artwork, homewares and other general consumer goods.

3. RELEVANT PROVISIONS

- 3.1. Section 106 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, consumer goods of a particular kind if a safety standard for goods of that kind is in force; and the goods do not comply with that standard.
- 3.2. *Consumer Protection Notice No. 6 of 2005* is the applicable mandatory safety standard for household cots.
- 3.3. The mandatory safety standard is based on and modifies Australian and New Zealand Standard AS/NZS 2172:2003 Cots for household use - safety requirements.

4. CONDUCT OF CONCERN

- 4.1. On 24 January 2017, Compliance & Investigations Officers from Consumer and Business Services (CBS) conducted online surveillance of the eBay store operated by Email Pty Ltd, named "color_lifes" (the eBay store), where they observed cots advertised for sale.
- 4.2. The cots are captured by *Consumer Protection Notice No. 6 of 2005* (mandatory safety standard), which mandates certain design, performance, construction and labelling requirements for household cots.
- 4.3. CBS purchased two units of a cot, labelled "Email Life 3in1 Wood Baby Cot Crib Toddler Bed Pine Wood Adjustable Height White" (Email Cot White), code EM0069-01, from the eBay store and directed one unit to be sent to Furntech-AFRDI for laboratory testing against the requirements of the mandatory safety standard.

- 4.4. The laboratory testing by Furntech-AFRDI revealed that the Emall Cot White failed to meet 24 clauses of the mandatory safety standard. In particular:
- 4.4.1. Section 5.1 of AS/NZS 2172:2003 requires that all components of the cot are either (a) permanently fixed, or (b) require the use of a tool to enable partial or total disassembly, and (c) utilise a system of assembly/disassembly which precludes possible tampering by a child. The mattress base of the Emall Cot White is not fixed in place as it sits on eight (8) pins attached to the sides and ends of the cot, failing to meet the requirements of (b) and (c).
 - 4.4.2. Section 6.1(b) of AS/NZS 2172:2003 requires that, in relation to adjustable base cots, only two designated positions of the mattress base shall be permitted. The Emall Cot White has three positions for the mattress base.
 - 4.4.3. Section 6.1(b)(i) of AS/NZS 2172:2003 requires that, when the mattress base is in the lower position, the vertical distance between the top of the mattress base and the top edge of the lowest cot side or end when the access is closed, shall not be less than 600mm. When tested, the Emall Cot White had a distance of 594mm, a shortfall of 6mm. In addition, as a maximum mattress thickness was not specified on the cot, the cot's packaging or the cot's instructions, if a mattress thickness of greater than 100mm is specified, the shortfall will increase.
 - 4.4.4. Section 6.1(b)(ii) of AS/NZS 2172:2003 requires that when the mattress base is in the upper position, the vertical distance between the top of the mattress base and the top edge of the lowest cot side or end when the access is closed, shall not be less than 250mm. When tested, the Emall Cot White had a distance of 72mm, a shortfall of 178mm. As a maximum mattress thickness is not specified on the cot, the cot's packaging or the cot's instructions, if a mattress thickness of greater than 100mm is specified, the shortfall will increase.
 - 4.4.5. Section 6.1(b) of AS/NZS 2172:2003 requires that the distance between the mattress (complying with its recommended size), at its centred position, and any part of the cot sides or ends measured horizontally, shall not be more than 20mm. This was reported as a failure by omission, as the recommended mattress size and thickness is not specified on the cot, the cot's packaging, or the cot's instructions, and as such this requirement could not be assessed.
 - 4.4.6. Section 6.3 of AS/NZS 2172:2003 requires that any access fastening device shall engage automatically when the dropside is raised. The dropside of the Emall Cot White did not automatically engage when raised due to the operation of the spring-loaded locking pins.
 - 4.4.7. Section 6.7 of AS/NZS 2172:2003 requires that protrusions shall not be more than 5mm unless they are so designed that they cannot snag on clothing. The Emall Cot White's dropside locking mechanisms' spring-loaded pin ends protruded 15mm and could snag clothing.
 - 4.4.8. Sections 6.8(a) and (c) of AS/NZS 2172:2003 require that, unless covered by padding or inaccessible when assembled, edges, protrusions or sharp points that are present over 100mm above the mattress base shall not be accessible to the 95mm diameter headform unless they have a radius of at least 2mm and not exceeding 5mm in height (for protrusions), and shall be free of burrs, sharp points, and sharp edges, with potential sharp points and sharp edges being tested in accordance with AS/NZS ISO 8124.1. The dropside locking mechanisms' spring-loaded pin ends of the Emall Cot White are accessible to the 95mm diameter headform, are higher than 5mm, and have sharp edges.
 - 4.4.9. Section 6.8(b) of AS/NZS 2172:2003 requires that, unless covered by padding or inaccessible when assembled, edges within the cot and along the top of the cot, that are accessible to the 95mm diameter headform, shall have a radius of at least 2mm or be chamfered in accordance with Figure 4 [of AS/NZS 2172:2003]. Various horizontal and vertical edges within and around the top of the Emall Cot White have a radius less than 2mm.

- 4.4.10. Section 9.3 of AS/NZS 2172:2003 requires that, when tested in accordance with Appendix B [of AS/NZS 2172:2003], the cot shall not fail or become permanently deformed nor shall any screw, fastening device or joint between sub-assemblies become loose and the access shall remain closed throughout the test. The Emall Cot White's mattress base timber joints fractured after one (1) impact of the 30kg test weight, out of the required 200 impact cycles. The testing laboratory noted that the timber joints were lightly constructed being only of staples and glue.
- 4.4.11. Section 11.1(c) of AS/NZS 2172:2003 requires that each cot shall include a specific statement regarding the recommended mattress size (as provided in 11.1(c)) on a leaflet in the cot package. The Emall Cot White did not have the required statement.
- 4.4.12. Section 11.1(d) of AS/NZS 2172:2003 requires that each cot shall include a specific warning notice regarding the position of the mattress base (as provided in 11.1(d)) on a leaflet in the cot package. The Emall Cot White did not have the required warning notice.
- 4.4.13. Section 11.1(e) of AS/NZS 2172:2003 requires that each cot shall include the manufacturer's, importer's or distributor's name and contact address on a leaflet in the cot package. The Emall Cot White did not have the required information.
- 4.4.14. Section 11.1(f) of AS/NZS 2172:2003 requires that each cot has a statement on a leaflet in the cot's package drawing attention to (i) the need to follow the manufacturer's assembly instructions in detail to ensure the safety features of the cot are not compromised; (ii) the need to ensure the cot is placed at a reasonable distance from curtains, blinds, heaters and power points; and (iii) the need to keep medication, string, elastic, small toys or small items, such as money, out of reach from any position in the cot. The Emall Cot White did not include this information on the instructions or in a leaflet.
- 4.4.15. Sections 11.2(a) and (b) of AS/NZS 2172:2003 require that the recommended mattress size and manufacturer's name and address are shown on the swing tag or label of the cot. The Emall Cot White did not have a swing tag or label with this information attached to the cot.
- 4.4.16. Section 11.3 of AS/NZS 2172:2003 requires that a specific warning notice relating to the mattress size is shown on the cot's external packaging. This warning notice was not present on the external packaging of the Emall Cot White.
- 4.4.17. Section 12.1(b) of AS/NZS 2172:2003 requires that cots not manufactured in Australia or New Zealand shall be prominently marked on the top surface of the mattress base, or both surfaces if the base is reversible, with the country of origin and the importer's name and address. The Emall Cot White did not show the required information on a label on the mattress base (noted as two separate failures). The testing laboratory noted that a label was present on the inside of one end of the cot below the mattress base, which was partially obscured when the cot was assembled by the drawer runner. This label contained the importer's name and address, country of origin and purchase order number.
- 4.4.18. Section 12.1(c) of AS/NZS 2172:2003 requires that cots shall be prominently marked on the top surface of the mattress base, or both surfaces if the base is reversible, with the recommended mattress size [in the form provided in 12.1(c)]. The Emall Cot White did not show the required information on a label on the mattress base.
- 4.4.19. Section 12.1(d) of AS/NZS 2172:2003 requires that cots shall be prominently marked on the top surface of the mattress base, or both surfaces if the base is reversible, with a warning notice relating to the maximum mattress thickness [as provided in 12.1(d)]. The Emall Cot White did not show the required warning notice on a label on the mattress base.
- 4.4.20. Section 12.1(e) of AS/NZS 2172:2003 requires that cots shall be prominently marked on the top surface of the mattress base, or both surfaces if the base is reversible, with a warning notice relating to the position of the mattress base [as provided in 12.1(e)]. The Emall Cot White did not show the required warning notice on a label on the mattress base.
- 4.4.21. Section 12.1(f) of AS/NZS 2172:2003 requires that cots shall be prominently marked on the top surface of the mattress base, or both surfaces if the base is reversible, with the

month and year of manufacture. The Emall Cot White did not show the required information on a label on the mattress base.

4.4.22. Section 12.2 of AS/NZS 2172:2003 requires that the wording required by 12.1 shall be clearly legible in monoline, geometric, lineale typeface of medium width characters not less than 2.5mm high, and that warnings shall be in bold, uppercase typeface and not less and 5mm high. There was no information or warnings on the mattress base of the Emall Cot White.

4.4.23. Section 12.3 of AS/NZS 2172:2003 requires that labels shall show no detachment from the cot, and the wording on labels either fixed to the product or on marking shall be easily legible when rubbed by hand for 15 seconds with a piece of cloth soaked in water, allowed to dry and rubbed for 15 seconds with a piece of cloth soaked with undiluted liquid domestic dishwashing detergent. There was no information or warnings on the mattress base of the Emall Cot White. The label that was present on the inside of one end of the cot below the mattress base, as mentioned in 4.4.17 of this document, was tested accordingly, and failed when rubbed with a wet cloth for 15 seconds as the label faded and was illegible.

4.5. As a result, CBS contacted Mr Shaoming Zhang and requested evidence of compliance with the mandatory safety standard for each style of cot supplied through Emall Pty Ltd, and the immediate removal of all cots from sale pending completion of the investigation.

4.6. Mr Zhang was unable to provide CBS with evidence that any of the cots supplied through Emall Pty Ltd were compliant with the mandatory safety standard.

5. CONTRAVENTIONS

5.1. The Commissioner considers, and Emall Pty Ltd acknowledges, that by engaging in the conduct described in paragraph 4 above, it is likely that Emall Pty Ltd has:

5.1.1. Supplied cots that did not comply with a safety standard, and thereby contravened section 106(1) of the ACL.

5.1.2. Offered cots for supply that did not comply with a safety standard, and thereby contravened section 106(2) of the ACL.

5.1.3. Possessed and had control of cots that did not comply with a safety standard, and thereby contravened section 106(3) of the ACL.

5.2. The Commissioner considers, and Mr Shaoming Zhang acknowledges, that it is likely that he aided, abetted, counselled or procured Emall Pty Ltd to contravene the provisions outlined at 5.1.1 to 5.1.3 above.

6. VOLUNTARY RECALL

6.1. On the recommendation of CBS, Emall Pty Ltd submitted a national voluntary recall, published on 4 May 2017 by the Australian Competition and Consumer Commission (ACCC), for all three styles of cots offered through the eBay store.

6.2. As part of their recall process, Emall Pty Ltd was required to contact all customers who had purchased cots and ensure that the recalled cot was either appropriately destroyed or returned to them, and provide consumers with a full refund.

6.3. On 16 June 2017, based upon the data provided by eBay, CBS sent an email to consumers who had purchased cots through the eBay store. The email advised consumers of the recall and recommended that they discontinue use of the cot and, if not already done, contact is made with Emall Pty Ltd.

- 6.4. CBS received responses from twelve (12) consumers stating that they were experiencing difficulty with contacting the business and receiving a refund and/or having the recalled cot collected. A number of consumers stated that they were unaware of the recall prior to CBS' email. CBS provided the consumers with Mr Zhang's phone number and/or relayed the consumer's details to Mr Zhang, and requested a quick resolution to the consumer's concerns. Mr Zhang has complied with these requests and has resolved these issues.

7. COMMENCEMENT OF UNDERTAKING

- 7.1. This Undertaking comes into effect when:

- 7.1.1. The Undertaking is executed by Emall Pty Ltd and Mr Shaoming Zhang.
7.1.2. The Commissioner accepts the Undertaking so executed.

8. UNDERTAKINGS GIVEN FOR THE PURPOSES OF SECTION 218 OF THE ACL

- 8.1. Emall Pty Ltd gives the following undertakings to the Commissioner for Consumer Affairs for the purposes of s 218 of the ACL:
- 8.1.1. Emall Pty Ltd will not supply, offer for supply or possess/have control of goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.
- 8.1.2. Emall Pty Ltd will implement a written product safety compliance program within three (3) months from the when this Undertaking is signed, to ensure that:
- 8.1.2.1. New stock does not get offered or otherwise advertised for sale until Emall Pty Ltd is satisfied that it is not in breach of safety standards, information standards, or bans under the ACL.
- 8.1.2.2. Current stock is regularly audited to ensure that it is not in breach of safety standards, information standards, or bans under the ACL.
- 8.1.2.3. Emall Pty Ltd will nominate a person responsible for the implementation and maintenance of the product safety compliance program.
- 8.1.2.4. Emall Pty Ltd will implement and conduct training for relevant staff within four (4) months of signing this Undertaking, and then annually, to ensure that the product safety compliance program is understood and complied with.
- 8.1.2.5. Emall Pty Ltd will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 8.1.2.4 and Emall Pty Ltd will provide this to CBS within one (1) month after the initial training has been completed.
- 8.1.3. Emall Pty Ltd will ensure that all consumers whose contact details are available to Emall Pty Ltd, and who have not returned their recalled cot, are contacted regarding the recall, and the method of contact includes all available avenues (e.g. mail, phone, email).
- 8.1.4. Emall Pty Ltd will ensure that consumers who have not responded to the contact stipulated in 8.1.3 and returned the recalled cots, are contacted a second time, and the second contact is made within two (2) weeks of the first attempt.
- 8.1.5. Emall Pty Ltd will advise CBS of the progress of the recall on a monthly basis (in addition to the currently reporting requirements to the ACCC), and will accept reasonable instructions from CBS in relation to progressing the recall to capture all affected consumers.
- 8.2. Mr Shaoming Zhang gives the following undertaking to the Commissioner for Consumer Affairs for the purposes of s 218 of the ACL:

8.2.1. Mr Zhang will not aid, abet, counsel or procure a person (including a company) to supply, offer for supply or possess/have control of goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.

9. ACKNOWLEDGEMENTS

Email Pty Ltd and Mr Shaoming Zhang acknowledge that:

- 9.1. CBS will make this Undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website.
- 9.2. The ACCC may make this Undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety Australia website.
- 9.3. CBS may, from time to time, make public reference to the Undertaking including in news media statements and in CBS publications.
- 9.4. This Undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct.
- 9.5. This Undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

EXECUTED BY Email Pty Ltd and by Mr Shaoming Zhang in his person capacity


.....
Signature (Director)


.....
Signature of Witness

Date: 18/04/2018

Name: JINYI WU

Print name: Shaoming Zhang

Position: Director


.....
Signature (Director or Secretary)


.....
Signature of Witness

Date: 18/04/2018

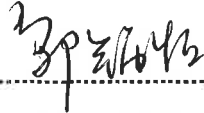
Name: YANLI CHEN

Print name: Zihao Song

Position: Director



Signature (Shaoming Zhang)



Signature of Witness

Date:

18/04/2018

Name:

JINYI WU

Print name:

Shaoming Zhang

Position:

Director.

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to *section 218* of the *Australian Consumer Law (SA)*.



Dini Soulio

Commissioner for Consumer Affairs (SA)

Date:

31/7/18