



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:

**Gardenia Home Garden Decor Pty Ltd, ACN 601 186 994,
Ducco Pty Ltd, ACN 159 108 371,
and their directors Mr Ho Keng Teo, and Mr Darren Minh Duc Nguyen.**

1. PERSONS GIVING THIS UNDERTAKING

1.1. This Undertaking is given to the Commissioner for Consumer Affairs (the Commissioner) by:

- Gardenia Home Garden Décor Pty Ltd,
- Ducco Pty Ltd,
- Mr Ho (Dennis) Keng Teo, and
- Mr Darren Minh Duc Nguyen,

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. Gardenia Home Garden Décor Pty Ltd, ACN 601 186 994, and Ducco Pty Ltd, ACN 159 108 371, are companies incorporated under the *Corporations Act 2001*.
- 2.2. Mr Teo and Mr Nguyen are current directors of both Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd.
- 2.3. Gardenia Home Garden Décor Pty Ltd is a retail store that supplies a range of goods, including garden pots, water features, homewares and other general consumer goods.
- 2.4. Ducco Pty Ltd is a wholesale company used to import products into Australia on behalf of Gardenia Home Garden Décor Pty Ltd.

3. RELEVANT PROVISIONS

- 3.1. Pursuant to section 104(1)(a) of the ACL, the Commonwealth Minister may, by written notice published on the internet, impose a safety standard for consumer goods of a particular kind.
- 3.2. Sections 106 and 194 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.
- 3.3. *Consumer Goods (Decorative Alcohol Fuelled Devices) Safety Standard 2017* (mandatory safety standard) is the applicable mandatory safety standard for decorative alcohol fuelled devices.

4. CONDUCT OF CONCERN

- 4.1. On 12 April 2018, officers from Consumer and Business Services (CBS) attended the retail store of Gardenia Home Garden Décor Pty Ltd, where a range of decorative alcohol fuelled devices were observed on display for sale.
- 4.2. The decorative alcohol fuelled devices are captured by the mandatory safety standard. To comply with the mandatory safety standard products are required to meet certain construction, stability, refuelling and labelling requirements.
- 4.3. The 22 decorative alcohol fuelled devices that were observed on display for sale at Gardenia Home Garden Décor Pty Ltd were:
 - 4.3.1. Aedus Fireplace - NX004
 - 4.3.2. Alba Fireplace - TD1M
 - 4.3.3. Angulia Fireplace - AF450
 - 4.3.4. Ashbei Fireplace - VF004
 - 4.3.5. Astoria Fireplace - TF47R
 - 4.3.6. Belle Fireplace - LL01
 - 4.3.7. Blasa Fireplace – AF34W
 - 4.3.8. Claremont Fireplace - AF25
 - 4.3.9. Conic Fireplace - Black - AF916
 - 4.3.10. Conic Fireplace White – AF9161
 - 4.3.11. Eber Fireplace - STJ003
 - 4.3.12. Ebios Fireplace - Ebios
 - 4.3.13. Edan Fireplace – AF919
 - 4.3.14. Eliza Fireplace Black - TEM31
 - 4.3.15. Eliza Fireplace White - TEM3
 - 4.3.16. Espada Fireplace
 - 4.3.17. Hollywood SS Fireplace – Hollywood SS
 - 4.3.18. Optimyst Fireplace - Optimyst
 - 4.3.19. Sophia Fireplace – AFZZZ
 - 4.3.20. Stratton Fireplace - Black - TG4Gmini-2
 - 4.3.21. Stratton Fireplace SS - TG4Gmini-1
 - 4.3.22. Wynn SS Fireplace - Wynss
- 4.4. CBS officers determined that 6 decorative alcohol fuelled devices on display for sale did not meet section 6 of the mandatory safety standard as they did not have a minimum footprint of 900 square centimetres; namely the Astoria Fireplace, Espada Fireplace, Eliza Fireplace (black and white models), and Stratton Fireplace (SS and black models).
- 4.5. All 22 decorative alcohol fuelled devices on display for sale did not meet section 9 of the mandatory safety standard as they did not display the required warning.
- 4.6. CBS officers seized 17 decorative alcohol fuelled devices, and issued Mr Teo with an Embargo notice for 22 models of decorative alcohol fuelled devices that were on display for sale and did not meet the requirements of the mandatory safety standard. The Embargo

notice was issued to prohibit the use, supply, lease and movement of the decorative alcohol fuelled devices (beyond the retail premise and the warehouse of Gardenia Home Garden Décor Pty Ltd, unless being returned to the overseas supplier), without the written consent of an authorised officer of CBS.

- 4.7. During the inspection Mr Teo provided CBS officers with a copy of an invoice from Soustar Metal Products Manufacturing Co Ltd located in China, addressed to Ducco Pty Ltd, which was for the purchase of 30 decorative alcohol fuelled device models. The invoice lists the model details, quantity supplied to Ducco Pty Ltd, and the total cost of the purchase.
- 4.8. On completion of the retail store inspection CBS officers asked Mr Teo to remove the non-compliant decorative alcohol fuelled devices from sale, and advised that it is the recommendation of CBS that a voluntary recall be conducted by Gardenia Home Garden Décor Pty Ltd for the unsafe products that have been supplied to consumers.
- 4.9. Following the inspection, CBS requested that Mr Teo provide evidence that each decorative alcohol fuelled device met the requirements of the mandatory safety standard, as the stability and refuelling requirements were not able to be visually examined.
- 4.10. Mr Teo obtained a test report from his overseas factory for a number of decorative alcohol fuelled devices showing that they had been tested to a European standard EN16647:2015.
- 4.11. The test report appears to only cover 1 of the decorative alcohol fuelled devices that were observed on display for sale at Gardenia Home Garden Décor Pty Ltd on 12 April 2018.
- 4.12. Mr Teo was unable to provide CBS with evidence that the decorative alcohol fuelled devices that were on display for sale at Gardenia Home Garden Décor Pty Ltd were compliant with the mandatory safety standard.

5. CONTRAVENTIONS

- 5.1. The Commissioner considers, and Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd acknowledge, that by engaging in the conduct described in paragraph 4 above, it is likely that they have:
 - 5.1.1. Supplied decorative alcohol fuelled devices that did not comply with a safety standard, and thereby contravened section 106(1) and 194(1) of the ACL.
 - 5.1.2. Offered decorative alcohol fuelled devices for supply that did not comply with a safety standard, and thereby contravened section 106(2) and 194(2) of the ACL.
 - 5.1.3. Possessed and had control of decorative alcohol fuelled devices that did not comply with a safety standard, and thereby contravened section 106(3) and 194(3) of the ACL.
- 5.2. The Commissioner considers, and Mr Teo acknowledges, that it is likely that he aided, abetted, counselled or procured Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd to contravene the provisions outlined at 5.1.1 to 5.1.3 above.
- 5.3. The Commissioner considers, and Mr Nguyen acknowledges, that it is likely that he aided, abetted, counselled or procured Gardenia Home Garden Décor Pty Ltd and Ducco 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, Gardenia Home Garden Décor Pty Ltd submitted a national voluntary recall with the Australian Competition and Consumer Commission (ACCC), which the ACCC published on the Product Safety Australia website on 17 April 2018.
- 6.2. The recall included 9 table top models that had been sold to consumers since 1 July 2015, and 6 other models that were supplied to consumers since 1 January 2017.

- 6.3. As part of the recall process Mr Teo advised that a recall notice was placed in the retail store located on the counter, on their website, and on their social media pages. Mr Teo also advised that he made contact with the bank to attempt to establish details of consumers who purchased the unsafe decorative alcohol fuelled devices.

7. COMMENCEMENT OF UNDERTAKING

- 7.1. This Undertaking comes into effect when:

- 7.1.1. The Undertaking is executed by Gardenia Home Garden Décor Pty Ltd, Ducco Pty Ltd, Mr Teo and Mr Nguyen.
- 7.1.2. The Commissioner accepts the Undertaking so executed.

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

- 8.1. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd give the following undertakings to the Commissioner for the purposes of section 218 of the ACL:
- 8.1.1. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd will not supply, offer for supply or possess/have control of goods that do not comply with an applicable safety standard, in accordance with the requirements of the ACL.
- 8.1.2. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd will implement a written product safety compliance program within three months from when this Undertaking is signed, to ensure that:
- 8.1.2.1. New stock does not get offered or otherwise advertised for sale until Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd are 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. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd will nominate a person responsible for the implementation and maintenance of their product safety compliance programs.
- 8.1.2.4. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd will implement and conduct training for their relevant staff within four 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. Gardenia Home Garden Décor Pty Ltd and Ducco Pty Ltd will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 8.1.2.4, and will provide this to CBS within one month after the initial training has been completed.
- 8.2. Mr Teo gives the following undertaking to the Commissioner for the purposes of section 218 of the ACL:
- 8.2.1. Mr Teo 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 standard, in accordance with the requirements of the ACL.
- 8.3. Mr Nguyen gives the following undertaking to the Commissioner for the purposes of section 218 of the ACL:
- 8.3.1. Mr Nguyen 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 standard, in accordance with the requirements of the ACL.

9. ACKNOWLEDGEMENTS

Gardenia Home Garden Décor Pty Ltd, Ducco Pty Ltd, Mr Teo, and Mr Nguyen 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 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 Gardenia Home Garden Décor Pty Ltd, Ducco Pty Ltd, and by Mr Ho Teo and Mr Darren Nguyen in the person capacity



Signature (Director)

Gardenia Home Garden Décor Pty Ltd

Date:

25/7/18

Print name:

Demis Teo

Position:

Director



Signature (Director or Secretary)

Gardenia Home Garden Décor Pty Ltd

Date:


25/7/18

Print name:

Darren Nguyen

Position:

Director



Signature of Witness

Name:

My Vo



Signature of Witness

Name:

My Vo



Signature (Director)

Ducco Pty Ltd

Date: 25/7/18

Print name: Dennis Teo

Position: Director



Signature of Witness

Name: My Vo



Signature (Director or Secretary)

Ducco Pty Ltd

Date: 25/7/18

Print name: Darren Nguyen

Position: Director



Signature of Witness

Name: My Vo



Signature (Ho Teo)

Date: 25/7/18

Print name: Dennis Teo

Position: Director



Signature of Witness

Name: My Vo



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Signature (Darren Nguyen)



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Signature of Witness

Date: 25/7/18

Name: My Vo

Print name: Darren Nguyen

Position: Director

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



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Commissioner for Consumer Affairs (SA)

Date: 8/8/18