



**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:

**Gay IRWIN, Director of G B Distributors Pty Limited (ACN 078 403 095), trading as Get A Bargain**

**1. PERSONS GIVING THIS UNDERTAKING**

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs by Gay Irwin of [REDACTED] in the State of South Australia for the purposes of section 218 of the *Australian Consumer Law (SA)* ('ACL'), which is adopted by the *Fair Trading Act 1987*.

**2. BACKGROUND**

- 2.1. Gay Irwin is a sole Director of G B Distributors Pty Limited (ACN 078 403 095), trading as Get A Bargain.
- 2.2. The business supplies a range of discount goods, including sunglasses, toys, and cosmetic products.
- 2.3. Prior to the conduct of concern Consumer and Business Services ('CBS') had identified a number of potential breaches that had been dealt with administratively by way of warning and the issuance of an expiation fine, and through removal and re-labelling of the relevant products.

**3. CONDUCT OF CONCERN**

- 3.1. On 14 April 2016, Compliance and Investigations Officers from CBS attended Get A Bargain located at 7 Tod Street, Gawler, South Australia, where they located:
- 3.1.1. Four (4) units of a product named 'Rose Garden Home Fragrance', each unit containing three (3) soaps;
- 3.1.2. Fifty five (55) sunglasses; and
- 3.1.3. Twelve (12) sunglasses that appeared to be for novelty dress up purposes.
- 3.2. The soaps contained within the product listed in 3.1.1 are classified as cosmetic products as per the definition supplied in the applicable mandatory information standard for cosmetic products. The soaps did not show their ingredients in English as per the requirements of the mandatory information standard for cosmetic products.
- 3.3. The sunglasses listed in 3.1.2 are captured by the mandatory safety standard for sunglasses and fashion spectacles. The sunglasses were not labelled with their category number, category description, and the identity of the manufacturer or supplier as per the requirements of the mandatory safety standard for sunglasses and fashion spectacles.
- 3.4. The sunglasses listed in 3.1.3 are not labelled as toys and thus are captured by the mandatory safety standard for sunglasses and fashion spectacles. The sunglasses were not labelled with their category number, category description, and the identity of the

manufacturer or supplier as per the requirements of the mandatory safety standard for sunglasses and fashion spectacles.

#### 4. RELEVANT PROVISIONS

- 4.1. 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.
- 4.2. Section 118 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 an interim ban on consumer goods of that kind is in force in the place where the supply occurs, or a permanent ban on consumer goods of that kind is in force.
- 4.3. Section 136 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, goods of a particular kind if an information standard for goods of that kind is in force, and the person has not complied with that standard.
- 4.4. The *Consumer Protection Notice No. 13 of 2003 — Consumer product safety standard: Sunglasses and fashion spectacles*, taking into account amendments up to *Consumer Protection Notice No. 4 of 2005* is the applicable mandatory safety standard for sunglasses and fashion spectacles.
  - 4.4.1. The mandatory safety standard is based on Australian Standard AS/NZS 1067:2003 Sunglasses and Fashion Spectacles. AS/NZS 1067:2003 is a voluntary standard except for those sections specifically called into the mandatory standard.
  - 4.4.2. Division 1 of the mandatory safety standard provides the definition of sunglasses and fashion spectacles.
  - 4.4.3. Section 4 of AS/NZS 1067:2003, which is called into the mandatory safety standard, requires that sunglasses must be clearly and legibly marked or labelled with the identity of the manufacturer or supplier, the lens category number, and one of the lens and category descriptions. The mandatory safety standard states that, in relation to the methods of marking and labelling, the information shall be supplied in the form of an indelible marking on the sunglass frame, or a removable label affixed to the lens, or a removable label securely attached or tied to the frame, or any combination of these means.
  - 4.4.4. The fifty five (55) sunglasses listed in 3.1.2 and the twelve (12) sunglasses listed in 3.1.3 are captured by the mandatory safety standard and did not show their category number, category description, and the identity of the manufacturer or supplier in any way visible to CBS Officers, nor were they labelled as toys in any way visible to CBS Officers.
- 4.5. The *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* (mandatory information standard) is the applicable mandatory information standard for cosmetic products.
  - 4.5.1. Section 3 of the mandatory information standard states that cosmetic products are substances or preparations intended for placement in contact with any external part of the body for the purpose of altering the odours of the body, changing the appearance of the body, cleansing the body, maintaining the body in good condition, perfuming the body, and protecting the body.
  - 4.5.2. Section 5 of the mandatory information standard states that the ingredients in a cosmetic product must be listed on the container or, if the product is not packed in a container, on the product. If the product's size, shape or nature prevents the ingredients from being listed on the product or its container, the ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients in the product.



- 4.5.3. Section 6 of the mandatory information standard states that the list of ingredients must be prominently shown, clearly legible, and in English.
- 4.5.4. The soaps contained within the 'Rose Garden Home Fragrance' and listed in 3.1.1 are captured by the definition of a cosmetic product. The soaps did not show their ingredients in English on their packaging or in any other way visible to CBS Officers.

## 5. COMMENCEMENT OF UNDERTAKING

- 5.1. This Undertaking comes into effect when:
  - 5.1.1. the Undertaking is executed by Gay Irwin; and
  - 5.1.2. the Commissioner for Consumer Affairs accepts the Undertaking so executed.

## 6. UNDERTAKING BY GAY IRWIN FOR THE PURPOSES OF SECTION 218 OF THE ACL

- 6.1. In response to the concerns raised by CBS on behalf of the Commissioner for Consumer Affairs, I, Gay Irwin, hereby provide an undertaking to the Commissioner that:
  - 6.1.1. I will not breach the product safety provisions contained within the ACL.
  - 6.1.2. I will not supply goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.
  - 6.1.3. I will not supply goods that are covered by an interim or permanent ban in accordance with the requirements of the ACL.
  - 6.1.4. I will implement a written product safety compliance program to ensure that:
    - 6.1.4.1. new stock does not get offered or otherwise advertised for sale until I am satisfied that it is not in breach of safety standards, information standards, or bans under the ACL;
    - 6.1.4.2. current stock is regularly audited to ensure that it is not in breach of safety standards, information standards, or bans under the ACL;
    - 6.1.4.3. I will nominate a person responsible for the implementation and maintenance of the product safety compliance program;
    - 6.1.4.4. I will implement and conduct training for relevant staff within three (3) months of signing this undertaking, and then annually, to ensure that the product safety compliance program is understood and obeyed; and
    - 6.1.4.5. I will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 6.1.4.4 and I will provide this to CBS within one (1) month after the initial training has been completed.

## 7. ACKNOWLEDGEMENTS

I, Gay Irwin, acknowledge that:

- 7.1. CBS will make this undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website;
- 7.2. The Australian Competition and Consumer Commission ('ACCC') may make this undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety Australia website;
- 7.3. CBS will, from time to time, make public reference to the undertaking including in news media statements and in CBS publications;



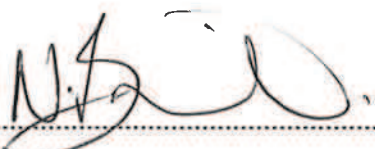
- 7.4. This undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct; and
- 7.5. This undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

**EXECUTED BY Gay Irwin**



**Signature**


Date: 9/2/17



**Signature of Witness**

Name: 9/2/2017

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: 24/2/17