



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:

Chuan JIANG, Director of Kawaii Fashion Holdings Pty Ltd (ACN 158 866 016) and Kawaii Tradings Pty Ltd (ACN 167 959 962), trading as Kawaii \$2.80, Kawaii \$2.80 Everything Elizabeth and Kawaii Fashion

1. PERSONS GIVING THIS UNDERTAKING

1.1. This Undertaking is given to the Commissioner for Consumer Affairs by Chuan JIANG 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. Chuan Jiang is a sole Director of companies Kawaii Fashion Holdings Pty Ltd (ACN 158 866 016) trading as Kawaii Fashion and Kawaii Tradings Pty Ltd (ACN 167 959 962) trading as Kawaii \$2.80 and Kawaii \$2.80 Everything Elizabeth.
- 2.2. The businesses supply a range of personal and household goods, including a variety of cosmetic products, sunglasses and toys.
- 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 through removal and re-labelling of the relevant products.

3. CONDUCT OF CONCERN

- 3.1. On 18 November 2015, Compliance and Investigations Officers from CBS attended Kawaii \$2.80 located at 66 King William Street, Adelaide, South Australia, where they located four (4) cosmetic products that were not labelled with their ingredients in English, namely:
 - 3.1.1. 'Tattoo Seal Angel Wings', barcode 4 582186 037996;
 - 3.1.2. 'Loujene 12 Colours Eye Shadow Palette 03', barcode 4 980299 044403;
 - 3.1.3. 'Crayon touch-me', barcode 4 965412 230635; and
 - 3.1.4. 'All in one', barcode 4 965412 226263.
- 3.2. On 14 April 2016, Compliance and Investigations Officers from CBS attended Kawaii \$2.80 Everything Elizabeth located at Elizabeth Shopping Centre, 50 Elizabeth Way, Elizabeth, South Australia, where they located one (1) type of cosmetic product that was not labelled with its ingredients in English, namely two flavours of a product named 'Loujene Moisture Lip Cream', barcodes 4 980299 011429 and 4 980299 011443.
- 3.3. The products listed in 3.1.1-3.1.4 and 3.2 are classified as cosmetic products as per the definition supplied in the applicable mandatory information standard for cosmetic products.
- 3.4. The products listed in 3.1.1-3.1.4 and 3.2 do not show their ingredients in English as per the requirements of the applicable mandatory information standard for cosmetic products.



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 *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* is the applicable mandatory information standard for cosmetic products.
- 4.5. 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.
- 4.6. 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.
- 4.7. Section 6 of the mandatory information standard states that the list of ingredients must be prominently shown, clearly legible, and in English.
- 4.8. The products purchased from Kawaii \$2.80 and Kawaii \$2.80 Everything Elizabeth and listed in 3.1.1-3.1.4 and 3.2 are captured by the definition of a cosmetic product. The products 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 Chuan Jiang; and
 - 5.1.2. the Commissioner for Consumer Affairs accepts the Undertaking so executed.

6. UNDERTAKING BY CHUAN JIANG 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 Chuan Jiang, 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:

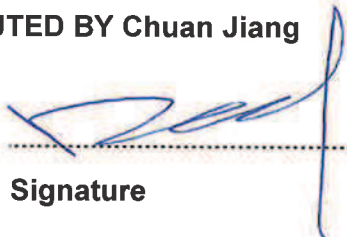
- 6.1.4.1. new stock does not get offered or otherwise advertised for sale until I am satisfied that it is not in breach of safety standards, information standards, or bans under the ACL;
- 6.1.4.2. current stock is regularly audited to ensure that it is not in breach of safety standards, information 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, Chuan Jiang, 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 Chuan Jiang


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Signature

Date: 24/01/2017


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Signature of Witness

Name: Nicole Barile

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


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George Kamencak
A/Commissioner for Consumer Affairs (SA)

Date: 6/2/17

