



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:

Mr John Farrugia, Ms Mary Rose Farrugia, Ms Rosemarie Farrugia, Mr David John Farrugia,
ABN 40 878 900 382, trading as Spend A Penny

1. PERSONS GIVING THIS UNDERTAKING

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs (the Commissioner) by Mr John Farrugia, Ms Mary Rose Farrugia, Ms Rosemarie Farrugia, and Mr David John Farrugia (the Partnership), 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. The Partnership trades under the business name "Spend A Penny", ABN 40 878 900 382.
- 2.2. Spend A Penny is a discount variety store and supplies a range of goods, including toys, stationary, gifts, homewares, clothing, 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, manufacturing, possessing, or having control of consumer goods of a particular kind if a safety standard for such goods is in force and the goods do not comply with that standard.
- 3.2. *Consumer Protection Notice No 3 of 2009* was the applicable mandatory safety standard for swimming and flotation aids until 19 December 2017. *Consumer Protection Notice No 3 of 2009* is based on and modifies Australian standard AS 1900-2002 Flotation aids for water familiarization and swimming tuition.
- 3.3. As of 20 December 2017, *Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017* (mandatory safety standard) is the related safety standard for swimming and flotation aids. The mandatory safety standard is based on and modifies Australian standard AS/NZS 1900:2014 Flotation aids for water familiarization and swimming tuition.
- 3.4. The mandatory safety standard provides a transitional period, which allows compliance with *Consumer Protection Notice No 3 of 2009* until 19 December 2019.
- 3.5. Section 136 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, manufacturing, possessing, or having control of consumer goods of a particular kind if an information standard for goods of that kind is in force; and the goods do not comply with that standard.
- 3.6. *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* (mandatory information standard) is the applicable information standard for cosmetic products.

4. CONDUCT OF CONCERN

- 4.1. On 7 October 2015, Compliance & Investigations Officers from Consumer and Business Services (CBS) conducted an inspection at Spend A Penny located at 620 Lower North East Road, Campbelltown, South Australia, where they observed two types of "Sainteve" branded flotation aids (Sainteve armbands) on display for sale.
- 4.2. At the time of the inspection, the Sainteve armbands were captured by *Consumer Protection Notice No 3 of 2009*, which mandated certain design, performance, construction and labelling requirements for swimming and flotation aids.
- 4.3. The Sainteve armbands did not show the required warning notice regarding the product being used under competent supervision.
- 4.4. CBS purchased two units of the Sainteve armbands, one coloured pink showing code "SY-A1083" and the other coloured orange showing code "SY-A1045".
- 4.5. CBS contacted Mr John Farrugia and requested evidence of compliance with *Consumer Protection Notice No 3 of 2009* in relation to the Sainteve armbands.
- 4.6. Ms Mary Rose Farrugia responded to the request and was unable to provide CBS with evidence that the Sainteve armbands were compliant with *Consumer Protection Notice No 3 of 2009*.
- 4.7. CBS instructed VicLab Pty Ltd (a laboratory accredited by the National Association of Testing Authorities Australia) to perform testing to the requirements of *Consumer Protection Notice No 3 of 2009*.
- 4.8. VicLab Pty Ltd provided a test report for each of the Sainteve armbands showing that both Sainteve armbands identically failed to meet 11 clauses of AS 1900-2002, mandated by *Consumer Protection Notice No 3 of 2009*. In particular:
 - 4.8.1. Section 3.4.1 of AS 1900-2002 requires that the chamber shall not deflate to 3kPa in a period of two minutes. The Sainteve armbands failed to meet this requirement.
 - 4.8.2. Section 4.1(a) of AS 1900-2002 requires that the name, trade name or trademark of the manufacturer or supplier in Australia shall be legibly marked on the flotation aids, in a colour contrasting with the background. This information was not evident on the Sainteve armbands.
 - 4.8.3. Section 4.1(b) of AS 1900-2002 requires that the manufacturer batch identification shall be legibly marked on the flotation aids, in a colour contrasting with the background. This information was not evident on the Sainteve armbands.
 - 4.8.4. Section 4.1(c) of AS 1900-2002 requires that flotation aids except swimming vests shall have in capital letters no less than 6mm "WARNING USE ONLY UNDER COMPETENT SUPERVISION". The incorrect wording and sizing was observed on the Sainteve armbands.
 - 4.8.5. Section 4.2 of AS 1900-2002 requires that the manufacturer batch identification shall be clearly marked in a conspicuous position on the packaging of the flotation aids, in a colour contrasting with the background and in a height of not less than 6mm. This information was not evident on the Sainteve armbands.
 - 4.8.6. Section 4.2 of AS 1900-2002 requires that the packaging of flotation aids except swimming vests shall have in capital letters no less than 6mm "WARNING USE ONLY UNDER COMPETENT SUPERVISION". The incorrect wording and sizing was observed on the Sainteve armbands.
 - 4.8.7. Section 4.2(b) of AS 1900-2002 requires that the age and body mass, in accordance with table 3.1, of the person for whom the flotation aid is designed is marked on the packaging. This information was not evident on the Sainteve armbands.

- 4.8.8. Section 4.3(a) of AS 1900-2002 requires that information relating to how to fit the aid correctly is supplied with the aid. This information was not evident on the Sainteve armbands.
- 4.8.9. Section 4.3(b) of AS 1900-2002 requires that a reminder of the requirement for the wearer to be under constant, competent supervision is supplied with the aid. This information was not evident on the Sainteve armbands.
- 4.8.10. Section 4.3(c) of AS 1900-2002 requires that information relating to how to check the aid for wear and tear and when to replace the aid is supplied with the aid. This information was not evident on the Sainteve armbands.
- 4.8.11. Section 4.3(d) of AS 1900-2002 requires that information relating to care and storage of the aid is supplied with the aid. This information was not evident on the Sainteve armbands.
- 4.9. The requirements between *Consumer Protection Notice No 3 of 2009* and the current mandatory safety standard, in relation to the issues identified in 4.8.1 – 4.8.11, remain consistent.
- 4.10. On 14 April 2016, Compliance & Investigations Officers from Consumer and Business Services (CBS) conducted an inspection at Spend A Penny located at 110 Yorktown Road, Elizabeth Park, South Australia, where they observed four cosmetic products on display for sale, namely two units of "My City" branded bath and shower gel, one unit of "My City" branded body lotion, and one unit of an orange coloured nail polish labelled only with "A".
- 4.11. The cosmetic products were captured by *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* (mandatory information standard), which requires that cosmetics are accurately labelled with their ingredients.
- 4.12. The cosmetic products were not labelled with their ingredients.

5. CONTRAVENTIONS

- 5.1. The Commissioner considers, and the Partnership acknowledges, that by engaging in the conduct described in paragraph 4.1 - 4.4 above, it is likely they have:
 - 5.1.1. Supplied flotation aids that did not comply with a safety standard, and thereby contravened section 106(1) of the ACL.
 - 5.1.2. Offered flotation aids 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 flotation aids that did not comply with a safety standard, and thereby contravened section 106(3) of the ACL.
- 5.2. The Commissioner considers, and the Partnership acknowledges, that by engaging in the conduct described in paragraph 4.9 – 4.11 above, it is likely they have:
 - 5.2.1. Supplied cosmetic products that did not comply with an information standard, and thereby contravened section 136(1) of the ACL.
 - 5.2.2. Offered cosmetic products for supply that did not comply with an information standard, and thereby contravened section 136(2) of the ACL.
 - 5.2.3. Possessed and had control of cosmetic products that did not comply with an information standard, and thereby contravened section 136(3) of the ACL.

6. VOLUNTARY RECALL

- 6.1. On the recommendation of CBS, the Partnership submitted two national voluntary recalls for the Sainteve armbands.
 - 6.1.1. On 10 November 2015, the Partnership lodged a voluntary product recall for the Sainteve armbands, citing the defect as incorrectly sized warning labels.
 - 6.1.2. On 15 February 2016, the Partnership lodged a second voluntary product recall for the Sainteve armbands, citing the defect as non-compliant with *Consumer Protection Notice No 3 of 2009* due to the potential for the valves to leak and deflate.
- 6.2. As part of their recall process, the Partnership was required to provide customers who had purchased Sainteve armbands from Spend A Penny with a full refund.

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

- 7.1. The Partnership gives the following undertakings to the Commissioner for Consumer Affairs for the purposes of s 218 of the ACL:
 - 7.1.1. They 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.
 - 7.1.2. They will implement a written product safety compliance program within three (3) months from when this Undertaking is signed, to ensure that:
 - 7.1.2.1. New stock does not get offered or otherwise advertised for sale until they are satisfied that it is not in breach of safety standards, information standards, or bans under the ACL.
 - 7.1.2.2. Current stock is regularly audited to ensure that it is not in breach of safety standards, information standards, or bans under the ACL.
 - 7.1.2.3. They will nominate a person responsible for the implementation and maintenance of the product safety compliance program.
 - 7.1.2.4. They 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.
 - 7.1.2.5. They will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 7.1.2.4, and provide this to CBS within one (1) month after the initial training has been completed.

8. COMMENCEMENT OF UNDERTAKING

- 8.1. This Undertaking comes into effect when:
 - 8.1.1. The Undertaking is executed by the Partnership.
 - 8.1.2. The Commissioner accepts the Undertaking so executed.

9. ACKNOWLEDGEMENTS

The partnership acknowledges 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 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.
- 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 Mr John Farrugia, Ms Mary Rose Farrugia, Ms Rosemarie Farrugia, and Mr David John Farrugia



Signature (John Farrugia)



Signature of Witness

Date: 28 JUN 2018

Name: Jasmin Spackman

Print name: JOHN FARRUGIA

Position: SENIOR PARTNER



Signature (Mary Rose Farrugia)



Signature of Witness

Date: 28 JUN 2018

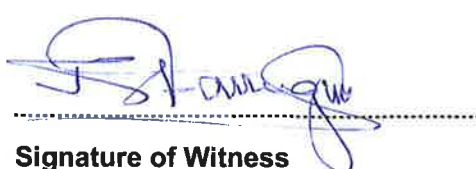
Name: Jasmin Spackman

Print name: MARY ROSE FARRUGIA

Position: SENIOR PARTNER


~~ROS~~ ~~ROSEMARIE~~

Signature (Rosemarie Farrugia)



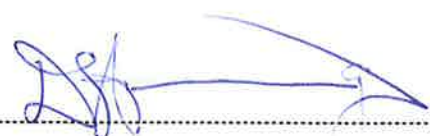
Signature of Witness

Date: 28 JUN 2018

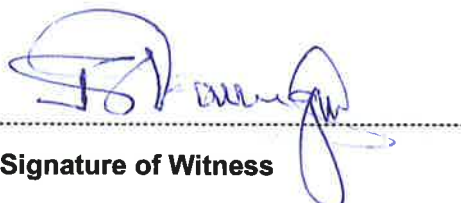
Name: JOHN FARRUGIA

Print name: ROSEMARIE FARRUGIA

Position: SILENT PARTNER



Signature (David John Farrugia)



Signature of Witness


Date: 1 JULY 2018

Name: 1/7/2018 JOHN FARRUGIA

Print name: DAVID FARRUGIA

Position: SILENT PARTNER

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: 12/7/18