

## **ENFORCEABLE UNDERTAKING**

### **SECTION 218 of the AUSTRALIAN CONSUMER LAW (VICTORIA)**

The commitments in this Undertaking are offered to the Director of Consumer Affairs Victoria by:

**GEMWIDE TRADING PTY LTD**

**(ACN 161 030 619)**

**and**

**WAN WING MO**

## TABLE OF CONTENTS

**Contents**

PARTIES.....	3
The Director.....	3
GEMWIDE TRADING PTY LTD.....	3
WAN WING MO.....	3
LEGISLATION.....	4
Australian Consumer Law (Vic).....	4
Application.....	4
Permanent Bans .....	4
Mandatory Safety Standards .....	4
Failure to comply with Mandatory Safety Standards gives rise to civil or criminal proceedings:.....	5
Civil .....	5
Criminal.....	5
Mandatory Information Standards .....	6
Failure to comply with Mandatory Information Standards gives rise to civil or criminal proceedings:.....	6
Civil .....	6
Criminal.....	6
Administrative resolution .....	7
Mandatory Standards .....	7
CONSUMER AFFAIRS VICTORIA INVESTIGATION.....	8
Inspection and seizure .....	8
Determination of Non-Compliance .....	9
Contraventions of the ACL .....	10
Acknowledgment of the Breach .....	10
Destruction of Goods .....	15
UNDERTAKINGS.....	15
Refrain from further non-compliant conduct .....	15
Provide refunds on recalled items .....	16
Compliance Program .....	16
Payment to the Victorian Consumer Law Fund .....	17
COMMENCEMENT .....	17
CONCLUSION/DURATION.....	17
PUBLIC NATURE OF UNDERTAKING .....	17
COMPLIANCE AND ENFORCEMENT .....	17
EXECUTION .....	18
ANNEXURES.....	19
Annexure A – Seized Goods.....	19
Annexure B – Mandatory Standards and Bans .....	24
Annexure C – Compliance Program.....	28

## **PARTIES**

### **The Director**

1. The office of the Director of Consumer Affairs Victoria ("the Director") is provided for under section 107 of the *Australian Consumer Law and Fair Trading Act 2012* ("the Act").
2. The Director is responsible for the administration of the Act, the Australian Consumer Law ("the ACL") which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth), applied as a law of Victoria by Part 2-2 of the Act and known as the Australian Consumer Law (Victoria) ("the ACL (Vic)"), together with Victoria's other consumer protection legislation.
3. The Director, as a Regulator for the purposes of the ACL (Vic), and under the provisions of section 218 of the ACL (Vic), may accept a written Undertaking from any person in connection with any matter involving a contravention of the ACL (Vic) in respect of which the Director has a power or function, as a means of resolving contraventions of the ACL (Vic).

### **GEMWIDE TRADING PTY LTD**

4. GEMWIDE TRADING PTY LTD (ACN 161 030 619) ("GEMWIDE TRADING") is an Australian proprietary company limited by shares, which was registered on 31 October 2012. At all relevant times, GEMWIDE TRADING had and has its:
  - (a) registered office at 14-16 Clifford Street, Huntingdale Vic 3166; and
  - (b) principal place of business at 14-16 Clifford Street, Huntingdale Vic 3166.
5. GEMWIDE TRADING carries on business, in trade or commerce, operating as an importer and wholesaler in Victoria supplying discount variety goods products including disposable and novelty cigarette lighters, various smoking accessories, kids toys, homeware and other assorted personal items.

### **WAN WING MO**

6. WAN WING MO is and was, at all times relevant to this Undertaking:
  - (a) the sole director of GEMWIDE TRADING;

- (b) a person responsible ultimately for acquiring, or arranging the acquisition of, products supplied or offered for wholesale to numerous retailers; and
- (c) a person who was acting on behalf of GEMWIDE TRADING, in the usual and ordinary course of its business, in respect of the matter set out below.

## LEGISLATION

### Australian Consumer Law (Vic)

#### Application

- 7. On 1 January 2011, the ACL, set out in Schedule 2 to the *Competition and Consumer Act 2010* (C'th), was applied by Part 2.2 of the Act as a law of Victoria, which is known as the ACL (Vic).
- 8. Part 3-3 of the ACL (Vic) deals with the safety of consumer goods and product-related services.
- 9. Part 3-4 of the ACL (Vic) deals with the information standards for goods and services.

#### Permanent Bans

- 10. Section 114(1) of the ACL (Vic) provides for the imposition, by the Commonwealth Minister for Competition Policy and Consumer Affairs ("the Commonwealth Minister"), of a permanent ban for consumer goods of a particular kind to prevent or reduce risk of injury to any person.

#### Mandatory Safety Standards

- 11. Section 104 of the ACL (Vic) provides for the imposition, by the Commonwealth Minister, of a mandatory safety standard for consumer goods of a particular kind to prevent or reduce risk of injury to any person.



## **Failure to comply with Mandatory Safety Standards gives rise to civil or criminal proceedings:**

### **Civil**

12. Section 106 of the ACL (Vic) imposes an obligation upon persons to refrain from:
- (a) in trade or commerce, supplying or offering for supply consumer goods; or
  - (b) in or for the purpose of trade or commerce, possessing or having control of consumer goods;
- if a safety standard is in force in respect of those goods and those goods, do not comply with the standard.
13. A person who contravenes sections 106 of the ACL (Vic) may, in civil proceedings brought for contraventions of that section, be subject to the range of remedies available under Part 5-2 of the ACL (Vic), including the imposition of pecuniary penalties in respect of each contravention of not more than:
- (a) \$200,000 in the case of an individual; or
  - (b) \$1,100,000 in the case of a body corporate.

### **Criminal**

14. Section 194 of the ACL (Vic) creates an offence which is committed if a person:
- (a) in trade or commerce, supplies or offers for supply; or
  - (b) in or for the purposes of trade or commerce, possesses or has control of,—  
consumer goods of a particular kind and a safety standard for consumer goods of that kind is in force and those goods do not comply with that standard.
15. A person who breaches section 194 of the ACL (Vic) is liable, on conviction, to a fine, in respect of each offence, of not more than:
- (a) \$220,000 in the case of an individual; or
  - (b) \$1,100,000 in the case of a body corporate

## **Mandatory Information Standards**

16. Section 134 of the ACL (Vic) provides for the imposition, by the Commonwealth Minister, of a mandatory information standard for consumer goods of a particular kind.

## **Failure to comply with Mandatory Information Standards gives rise to civil or criminal proceedings:**

### **Civil**

17. Section 136 of the ACL (Vic) imposes an obligation upon persons to refrain from:
- (a) in trade or commerce, supplying or offering for supply consumer goods; or
  - (b) in or for the purpose of trade or commerce, possessing or having control of consumer goods;
- if an information standard is in force in respect of those goods and those goods, do not comply with that standard.
18. A person who contravenes sections 136 of the ACL (Vic) may, in civil proceedings brought for contraventions of that section, be subject to the range of remedies available under Part 5-2 of the ACL (Vic), including the imposition of pecuniary penalties in respect of each contravention of not more than:
- (a) \$220,000 in the case of an individual; or
  - (b) \$1,100,000 in the case of a body corporate

### **Criminal**

19. Section 203 of the ACL (Vic) creates an offence which is committed if a person:
- (a) in trade or commerce, supplies or offers for supply; or
  - (b) in or for the purposes of trade or commerce, possesses or has control of,—
- consumer goods of a particular kind and an information standard for consumer goods of that kind is in force and those goods do not comply with that standard.
20. A person who breaches section 203 of the ACL (Vic) may be convicted and liable, to a fine, in respect of each offence, of not more than:
- (a) \$220,000 in the case of an individual; or
  - (b) \$1,100,000 in the case of a body corporate

## Administrative resolution

21. Section 218 of the ACL (Vic) provides that the Director may accept a written undertaking given by a person for the purposes of addressing contraventions of the ACL (Vic) in resolution of such contraventions or breaches of the ACL (Vic) and may be downloaded from the website at [www.productsafety.gov.au](http://www.productsafety.gov.au).

## Mandatory Standards

22. For the purposes of Part 3-3 and 3-4 of the ACL (Vic), pursuant to section 65E of the *Trade Practices Act 1974* (C'th) and for the purposes of section 65C of the Act in relation to safety standards and section 65D of that Act in relation to information standards, the Commonwealth Minister made:
  - (a) A Mandatory Safety Standard, on 1 March 1997, relating to disposable cigarette lighters by way of the *Trade Practices (Consumer Product Safety Standard) (Disposable Cigarette Lighters) Regulations 1997* ("the Disposable Lighters Standard") which are mandatory standards by the operation of clause 4 to schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, and which continues in effect as if imposed pursuant of section 104(1)(a) of the ACL (Vic).;
  - (b) A Mandatory safety standard, on 1 December 2003, relating to toys for children up to and including 36 months of age by way of the Consumer Protection Notice No. 14 of 2003 as amended by Consumer Protection Notice No.1 of 2005 - Consumer Product Safety Standard: Toys for children up to and including 36 months of age ("Toys for Children up to and including 36 months of age Standard") which are mandatory standards by the operation of clause 4 to schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, and which continues in effect as if imposed pursuant of section 104(1)(a) of the ACL (Vic).; and
  - (c) An Information Standard, on 29 October 1991, relating to cosmetics by way of *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* ("the Cosmetics Standard") which are mandatory standards by the operation of clause 5 to schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, and which continues in effect as if imposed pursuant of section 134(1) of the ACL (Vic).
23. Copies of the standards are available and may be downloaded from the website at [www.productsafety.gov.au](http://www.productsafety.gov.au)



## CONSUMER AFFAIRS VICTORIA INVESTIGATION

### Inspection and seizure

24. On 24 November 2016, Consumer Affairs Victoria Inspectors (CAV Inspectors) pursuant to section 155 of the Act, attended the business premises at 12-16 Clifford Street, Huntingdale, Vic, 3166 ("the premises").
25. There, CAV Inspectors ascertained that GEMWIDE TRADING occupied the premises and operated an import and wholesale business offering for supply miscellaneous products including supplying discount variety goods products including disposable and novelty cigarette lighters, various smoking accessories, kids toys, homeware and other assorted personal items.
26. CAV Inspectors identified further non-compliant items offered for supply and determined that the 1,283 toys for children up to and including 36 months, 4,479 disposable/refillable cigarette lighters and 816 packs of tattoos were in contravention of the mandatory standards.
27. On 24 November 2016, CAV Inspectors as a result of their inspections at the premises, lawfully seized:
  - (a) 384 Acrobatic dolphin/sea lion toys;
  - (b) 167 Marine clown fish toys;
  - (c) 168 naughty tortoise toys;
  - (d) 300 Lively octopus toys;
  - (e) 48 Fun cartoon dog toys;
  - (f) 156 Interesting crocodile toys;
  - (g) 60 Crocodile wind-up toys;
  - (h) 816 Temporary Tattoos;
  - (i) 2529 Fudi lighters;
  - (j) 1000 Nass quality lighters;
  - (k) 700 MRK lighters; and
  - (l) 250 MRK fashion lighters

A sample of the toys, lighters and tattoos seized are depicted and described in **Annexure "A"** attached.



## Determination of Non-Compliance

28. On 24 November 2016, Consumer Affairs Victoria Inspectors determined the lighters seized and referred to in paragraph 27 did not meet the requirements of the Disposable Lighters Standard in that they did not display the following information, set out in the form below:
- (a) as a permanent part of the lighter, the name or other identification of the manufacturer or distributor of the lighter; or
  - (b) 'WARNING'- adjacent to the words that must be displayed under subparagraphs (c) to (j) below; or
  - (c) 'KEEP AWAY FROM CHILDREN' or 'KEEP OUT OF REACH OF CHILDREN'; or
  - (d) 'Ignite lighter away from face and clothing'; or
  - (e) 'Never expose to heat above 50°C OR TO PROLONGED SUNLIGHT'; or
  - (f) 'Never puncture or put in fire'; or
  - (g) for a lighter that contains flammable gas under pressure- 'Contains flammable gas under pressure'; or
  - (h) for a lighter that contains flammable liquid- 'contains flammable liquid'; or
  - (i) for a self-extinguishing lighter – 'Be sure flame is out after use'; or
  - (j) for a non-self-extinguishing lighter- 'This lighter does not extinguish itself- close the cover to put out'; or
  - (k) any combination of the required information identified in sub-paragraphs (a) to (j) above.
29. On 24 November 2016, Consumer Affairs Victoria Inspectors determined that the cosmetics seized and referred to in paragraph 27 failed the requirements of regulation 5 of the Cosmetics Standard because:
- (a) the ingredients of the cosmetics products were not listed on the container; or
  - (b) if the product was not packed in a container, on the product; or
  - (c) if (a) or (b) above could not be complied with because of its size, shape or nature, a list of ingredients were not shown in another way that ensured that a consumer could be informed about the ingredients in the product.
30. On 24 November 2016, Consumer Affairs Victoria Inspectors determined that the toys for children up to and including 36 months that were seized and referred to in paragraph 27 did not meet the requirements of the Toys for Children up to and including 36 months of age Standard because when tested in accordance with the required testing provisions, the toys liberated small parts which fitted entirely into the small parts cylinder without compression

and in all possible orientations, thereby failing the reasonably foreseeable abuse test and small parts test in clause 4.2 and 4.4 of the Australia/New Zealand Standard AS/NZ ISO 8124.1:2002 Safety of Toys.

### **Contraventions of the ACL**

31. The Director considers that GEMWIDE TRADING contravened sub-section 106(1), (2) and (3) respectively of the ACL (Vic) by supplying, offering to supply and having in its possession or control, in or for the purposes of trade or commerce not less than 4,479 disposable cigarette lighters that do not comply with the Disposable Lighters Standard.
32. The Director considers that GEMWIDE TRADING contravened sub-section 106(1), (2) and (3) respectively of the ACL (Vic) by supplying, offering to supply and having in its possession or control, in or for the purposes of trade or commerce not less than 1,283 toys for children up to and including 36 months that do not comply with the mandatory safety standard set out in the Toys for Children up to and including 36 months of age Standard.
33. The Director considers that GEMWIDE TRADING contravened sub-section 136(1), (2) and (3) respectively of the ACL (Vic) by supplying, offering to supply and having in its possession or control, in or for the purposes of trade or commerce not less than 816 packs of tattoos that do not comply with the Cosmetics Standard.
34. The Director is prepared to deal with these alleged contraventions by accepting this written undertaking pursuant to section 218 of the ACL (Vic).

### **Acknowledgment of the Breach**

35. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(1) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING did supply consumer goods of a particulars kind:
  - (a) for which a safety standard was in force, namely the Disposable Lighters Standard; and
  - (b) those goods did not comply with the Disposable Lighters Standard as they did not display the required particulars of that Standard namely,
    - i. as a permanent part of the lighter, the name or other identification of the manufacturer or distributor of the lighter; or



- ii. 'WARNING'- adjacent to the words that must be displayed under subparagraphs (c) to (j) below; or
  - iii. 'KEEP AWAY FROM CHILDREN' or 'KEEP OUT OF REACH OF CHILDREN'; or
  - iv. 'Ignite lighter away from face and clothing'; or
  - v. 'Never expose to heat above 50°C OR TO PROLONGED SUNLIGHT'; or
  - vi. 'Never puncture or put in fire'; or
  - vii. for a lighter that contains flammable gas under pressure- 'Contains flammable gas under pressure'; or
  - viii. for a lighter that contains flammable liquid- 'contains flammable liquid'; or
  - ix. for a self-extinguishing lighter – 'Be sure flame is out after use'; or
  - x. for a non-self-extinguishing lighter- 'This lighter does not extinguish itself- close the cover to put out'; or
  - xi. any combination of the required information identified in sub-paragraphs (i) to (x) above.
36. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(2) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING offered for supply consumer goods, the supply of which is prohibited by subsection 106(1), because, those consumer goods did not comply with the Disposable Lighters Standard, in that it did not display the required particulars namely,
- i. as a permanent part of the lighter, the name or other identification of the manufacturer or distributor of the lighter; or
  - ii. 'WARNING'- adjacent to the words that must be displayed under subparagraphs (c) to (j) below; or
  - iii. 'KEEP AWAY FROM CHILDREN' or 'KEEP OUT OF REACH OF CHILDREN'; or
  - iv. 'Ignite lighter away from face and clothing'; or
  - v. 'Never expose to heat above 50°C OR TO PROLONGED SUNLIGHT'; or
  - vi. 'Never puncture or put in fire'; or
  - vii. for a lighter that contains flammable gas under pressure- 'Contains flammable gas under pressure'; or
  - viii. for a lighter that contains flammable liquid- 'contains flammable liquid'; or



- ix. for a self-extinguishing lighter – 'Be sure flame is out after use'; or
  - x. for a non-self-extinguishing lighter- 'This lighter does not extinguish itself- close the cover to put out'; or
  - xi. any combination of the required information identified in sub-paragraphs (i) to (x) above.
37. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(3) of the ACL(Vic) in that GEMWIDE TRADING, did in or for the purposes of trade or commerce, possess or have control of goods, the supply of which is prohibited by subsection 106 (1), because those consumer goods did not comply with the Disposable Lighters Standard, in that it did not display the required particulars, namely:
- i. as a permanent part of the lighter, the name or other identification of the manufacturer or distributor of the lighter; or
  - ii. 'WARNING'- adjacent to the words that must be displayed under subparagraphs (c) to (j) below; or
  - iii. 'KEEP AWAY FROM CHILDREN' or 'KEEP OUT OF REACH OF CHILDREN'; or
  - iv. 'Ignite lighter away from face and clothing'; or
  - v. 'Never expose to heat above 50°C OR TO PROLONGED SUNLIGHT'; or
  - vi. 'Never puncture or put in fire'; or
  - vii. for a lighter that contains flammable gas under pressure- 'Contains flammable gas under pressure'; or
  - viii. for a lighter that contains flammable liquid- 'contains flammable liquid'; or
  - ix. for a self-extinguishing lighter – 'Be sure flame is out after use'; or
  - x. for a non-self-extinguishing lighter- 'This lighter does not extinguish itself- close the cover to put out'; or
  - xi. any combination of the required information identified in sub-paragraphs (i) to (x) above.
38. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(1) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING did supply consumer goods of a particulars kind:

- (a) for which a safety standard was in force, namely the Toys for Children up to and including 36 months of age Standard; and
  - (b) those goods did not comply with the Toys for Children up to and including 36 months of age Standard, because, when tested in accordance with the required testing provisions, the consumer goods either contained or liberated small parts which fitted entirely into the small parts cylinder without compression and in all possible orientations, thereby failing the reasonably foreseeable abuse test and small parts test in Clauses 4.2 and 4.4 of the Australia/ New Zealand Standard AS/NZS ISO 8124.1:2002 Safety of Toys.
39. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(2) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING offered for supply consumer goods, the supply of which is prohibited the supply is prohibited by subsection 106(1), because, those consumer goods did not comply with the Toys for Children up to and including 36 months of age Standard, because, when tested in accordance with the required testing provisions, the consumer goods either contained or liberated small parts which fitted entirely into the small parts cylinder without compression and in all possible orientations, thereby failing the reasonably foreseeable abuse test and small parts test in Clauses 4.2 and 4.4 of the Australia/ New Zealand Standard AS/NZS ISO 8124.1:2002 Safety of Toys.
40. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 106(3) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING did possess or have control of consumer goods, the supply of which is prohibited by subsection 106(1) because, those consumer goods did not comply with the Toys for Children up to and including 36 months of age Standard, because, when tested in accordance with the required testing provisions, the consumer goods either contained or liberated small parts which fitted entirely into the small parts cylinder without compression and in all possible orientations, thereby failing the reasonably foreseeable abuse test and small parts test in Clauses 4.2 and 4.4 of the Australia/ New Zealand Standard AS/NZS ISO 8124.1:2002 Safety of Toys.
41. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 136(1) of the ACL(Vic) in that, in trade or commerce, GEMWIDE TRADING did supply consumer goods of a particulars kind:



- (a) for which there was an information standard for goods of that kind in force, namely the Cosmetics Information Standard; and
  - (b) for which GEMWIDE TRADING has not complied with the Cosmetics Information Standard because:
    - i. the ingredients of the cosmetics products were not listed on the container; or
    - ii. if the product was not packed in a container, on the product; or
    - iii. if i. or ii. above could not be complied with because of its size, shape or nature, a list of ingredients were not shown in another way that ensured that a consumer could be informed about the ingredients in the product;
- as required by Clause 5(1) and 5(3).

42. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 136(2) of the ACL(Vic) in that GEMWIDE TRADING, in trade or commerce did offer for supply goods, the supply of which is prohibited by subsection 136 (1), because:

- i. the ingredients of the cosmetics products were not listed on the container or,
- ii. if the product was not packed in a container, on the product, or
- iii. if i. or ii. above could not be complied with because of its size, shape or nature, a list of ingredients were not shown in another way that ensured that a consumer could be informed about the ingredients in the product;

as required by Clause 5(1) and 5(3).

43. WANG WING MO on behalf of GEMWIDE TRADING, acknowledges that on 24 November 2016 GEMWIDE TRADING contravened subsection 136(3) of the ACL(Vic) in that GEMWIDE TRADING, did in or for the purposes of trade or commerce, possess or have control of goods, the supply of which is prohibited by subsection 136 (1), because:

- i. the ingredients of the cosmetics products were not listed on the container or,
- ii. if the product was not packed in a container, on the product, or
- iii. if i. or ii. above could not be complied with because of its size, shape or nature, a list of ingredients were not shown in another way that ensured that a consumer could be informed about the ingredients in the product;

as required by Clause 5(1) and 5(3).



44. WAN WING MO acknowledges personally that, at all times, he was directly or indirectly knowingly concerned in, and a party to GEMWIDE TRADING's contraventions referred to in paragraphs 35-43 of this Undertaking.
45. WAN WING MO, individually, and on behalf of GEMWIDE TRADING, seeks to address these acknowledged contraventions of section 106 and 136 of the ACL (Vic) by offering this Undertaking to the Director.

### **Destruction of Goods**

46. WAN WING MO, personally, and on behalf of GEMWIDE TRADING:
  - (a) confirms that GEMWIDE TRADING is the owner of or holds title to or was in control of the goods seized by CAV staff at GEMWIDE TRADING's premises on 24 November 2016;
  - (b) authorises for the Director to destroy and dispose of all the goods seized by CAV staff at GEMWIDE's premises on 24 November 2016;
  - (c) forfeits any claim or right or any future claim or right to those goods seized by CAV staff at GEMWIDE TRADING's premises on 24 November 2016; and
  - (d) will pay a total contribution of \$1,000.00 to the Director for the destruction of the goods, within 30 days of commencement of this undertaking.
47. Consumer Affairs Victoria staff will provide WAN WING MO, on behalf of GEMWIDE TRADING, a copy of the receipt for payment of destruction of the goods. If the total cost for the destruction of the goods is less than \$1000, Consumer Affairs Victoria staff on behalf of the Director will reimburse WAN WING MO any unused portion of the \$1000 contribution that was not applied towards the destruction of those goods.

## **UNDERTAKINGS**

### **Refrain from further non-compliant conduct**

48. WAN WING MO, personally, and on behalf of GEMWIDE TRADING, undertakes to the Director that he will:
  - (a) refrain from offering to supply;
  - (b) supplying; and

(c) being in possession or having under its control-

or being in any way, directly or indirectly knowingly concerned in or party to offering to supply, supplying, manufacturing, possession or controlling any products identified in **Annexure "B"** attached, which fail to comply with the requirements of any:

- (a) safety standard declared under Division 1 of Part 3-3 of the ACL (Vic);
- (b) interim or permanent ban order imposed under Division 2 of Part 3-3 of the ACL (Vic);
- or
- (c) information standard made under Part 3-4 of the ACL (Vic).

### **Provide refunds on recalled items**

49. WAN WING MO, personally, and on behalf of GEMWIDE TRADING, undertakes to the Director that he will pay a full refund to all persons returning any of the lighters, toys and tattoos recalled by GEMWIDE TRADING.

### **Compliance Program**

50. WAN WING MO, personally, and on behalf of GEMWIDE TRADING, undertakes to the Director that he will:
- (a) Implement a Compliance Program in accordance with **Annexure "C"** attached, designed to ensure that, in or for the purposes of trade or commerce, GEMWIDE TRADING will not supply, offer for supply or possess or have control of products, including products of a kind or class listed in **Annexure "B"** attached, that contravene any:
    - (i) safety standards declared under Division 1 of Part 3-3 of the ACL (Vic);
    - (ii) interim or permanent ban orders imposed under Division 2 of Part 3-3 of the ACL (Vic); or
    - (iii) information standard made under Part 3-4 of the ACL (Vic)-
 which are, in effect, as at the commencement date of this Undertaking, and for which there continues to exist a safety standard or interim or permanent ban order under the ACL (Vic); and
  - (b) within 65 days of the commencement of this Undertaking he will notify the Director in writing that in accordance with this Undertaking the Compliance Program has been implemented.
  - (c) Comply with the requirements set out in the Compliance Program including any specified time limits.

### **Payment to the Victorian Consumer Law Fund**

51. WAN WING MO, personally, and on behalf of GEMWIDE TRADING, undertakes to the Director that he will:
- (a) within 14 days of the commencement of this Undertaking pay a total of \$8,000.00 to the Director, on behalf of the VCLF; and
  - (b) within 7 days following the payment he will notify the Director in writing that the payment to the VCLF as set out above in this undertaking has been made.

### **COMMENCEMENT**

52. This Undertaking commences on the eighth day after the date the Director of Consumer Affairs Victoria signs the Undertaking.

### **CONCLUSION/DURATION**

53. This Undertaking remains in effect for a period of three years from its commencement.

### **PUBLIC NATURE OF UNDERTAKING**

54. WAN WING MO, personally, and on behalf of GEMWIDE TRADING acknowledges that:
- (a) pursuant to section 218 of the ACL (Vic), the Director will register this Undertaking in the Register of Undertakings on the Consumer Affairs Victoria website and the Undertaking will be available for public inspection;
  - (b) the Director and/or the Minister for Consumer Affairs Victoria may, from time to time, publicly refer to this Undertaking;
  - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
  - (d) no compensation is payable to it, or on its behalf, arising from the destruction by the Director, or his staff, of any of the goods seized from the premises on 22 September 2016.

### **COMPLIANCE AND ENFORCEMENT**

55. WAN WING MO, personally, and on behalf of GEMWIDE TRADING, acknowledges that:
- (a) Consumer Affairs Victoria will continue to conduct compliance monitoring inspections of premises of suppliers in Victoria, investigate and prosecute breaches of the ACL



(Vic) and institute and defend proceedings to achieve the purposes of the ACL (Vic);  
and

- (b) the Director of Consumer Affairs Victoria reserves the right to enforce a breach of this Undertaking in a Court to the full extent provided by law.

## EXECUTION

Signed by: ..... 

on

..... 17/5/.....2018

WAN WING MO- personally and as Company Director, on behalf of GEMWIDE TRADING

In the presence of..... PHARMACIST.....

Witness

(PRINT NAME) ..... KARAN KAPADIA

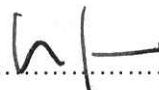
Signed by: ..... 



KEW

Adrian Sebastiano & Bruno Crisati  
Ground Floor 121 High Street  
KEW VIC 3101  
Ph: (03) 9855 1279 Fax: (03) 9855 2546  
ABN: 40 316 552 355 Reg No: 97

Accepted by the Director of Consumer Affairs Victoria pursuant to section 218 of the ACL.

..... 

DATED ..... 25 May 2018

Simon Cohen

## ANNEXURES

### Annexure A – Seized Goods

Goods seized from GEMWIDE TRADING by Consumer Affairs Victoria Inspectors on 24 November 2016.

#### PHOTOGRAPH 1

Depicts samples of the lighters seized



#### PHOTOGRAPH 2

Depicts samples of the lively octopus toy seized



PHOTOGRAPH 3

Depicts sample of the interesting crocodile toy seized



PHOTOGRAPH 4

Depicts sample of the naughty tortoise toy seized





PHOTOGRAPH 5

Depicts sample of the temporary tattoos seized



PHOTOGRAPH 6

Depicts sample of the acrobatic dolphin toy seized



PHOTOGRAPH 7

Depicts sample of the crocodile windup toy seized



PHOTOGRAPH 8

Depicts samples of the fun cartoon dog toy seized



PHOTOGRAPH 9

Depicts sample of the marine clown fish toy seized





## Annexure B – Mandatory Standards and Bans

### Mandatory Standards

List of products with mandatory standards regulated by the Australian Consumer Law and enforced by Consumer Affairs Victoria and other ACL regulators including the Australian Competition and Consumer Commission.



Aquatic toys



Baby dummies



Baby walkers



Balloon blowing kits



Basketball rings and backboards



Bath aids for babies



Bean bags



Bicycle helmets



Bicycles (pedal)



Blinds, curtains and window fittings



Bunk beds



Care labelling



Child car restraints



Cigarette lighters (disposable)



Cigarettes (reduced fire risk)



Cosmetics (ingredients labelling)



Cots (household)



Cots (portable folding)



Exercise cycles



Fire extinguishers (portable aerosol)



Fire extinguishers (portable non-aerosol)



Hot water bottles



Jacks (trolley)



Jacks (vehicle)

Mandatory standards (continued)



Luggage straps



Self-balancing scooters



Nightwear for children  
(including paper  
patterns)



Prams and strollers



Ramps for motor  
vehicles (portable)



Recovery straps for  
motor vehicles



Soccer goals  
(moveable)



Sunglasses and fashion  
spectacles



Support stands for  
vehicles



Swimming and floatation  
aids



Swimming pools  
(portable)



Tobacco health  
warnings



Toys (Projectile)



Toys and finger paints  
containing lead and  
other elements



Toys containing  
magnets



Toys for children up to  
and including 36  
months



Treadmills

Existing mandatory standards may be reviewed or new mandatory standards may be introduced from time to time. Please visit [www.productsafety.gov.au](http://www.productsafety.gov.au) for updated and current information

## Permanent Bans

Supplying the following products is permanently banned in Australia. Permanent bans are regulated by the Australian Consumer Law and enforced by Consumer Affairs Victoria and other ACL regulators including the Australian Competition and Consumer Commission.



Babies dummies with unsafe decorations



Baby dummy chains with unsafe decorations



Candles with lead wicks



Combustible candle holders



DEHP in children's plastic items



Fire foot bags



Gas masks containing asbestos



Glucomannan in tablet form



Magnets – small high powered



Mini jelly cups containing konjac



Mini motor bikes with unsafe design features



Novelty cigarettes



Pools and spas with unsafe design features



Sky lanterns



Smokeless tobacco products



Tinted head light covers



Tongue studs without holes



Toothpaste containing Diethylene glycol (DEG)



Toy like novelty cigarette lighters



Toys containing beads (inflatable, novelty and furniture)



### Permanent Bans (continued)



Undeclared knives or cutters in children's art, craft and stationery sets



Yo yo balls

Existing permanent bans may be reviewed or new permanent bans may be introduced from time to time. Please visit [www.productsafety.gov.au](http://www.productsafety.gov.au) for updated and current information

### Interim bans

Interim bans may be made by the state, territory or Commonwealth Minister. Their duration may be 60 – 120 days. Visit Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)) for details of any interim bans.

## **Annexure D – Compliance Program**

### **Interpretation**

1. In this Annexure:
  - (a) “the Director” means the Director of Consumer Affairs Victoria;
  - (b) “the ACL” means the Australian Consumer Law, being Schedule 2 to the *Competition and Consumer Act 2010* (C’t);
  - (c) “commencement date” means the date of the Enforceable Undertaking in this matter;
  - (d) “GEMWIDE TRADING” means GEMWIDE TRADING PTY LTD (ACN 161 030 619);
  - (e) “Compliance Officer” means the person appointed under paragraph 2 below;
  - (f) “Company Program” means the steps taken by GEMWIDE TRADING to comply with the Enforceable Undertaking in relation to the Compliance Program;
  - (g) “Enforceable Undertaking” means the undertaking agreed to between the Director and GEMWIDE TRADING signed, accepted and executed pursuant to section 218 of the ACL;
  - (h) “Relevant Provisions” means the sections in Part 3-3 and 3-4 of the ACL;
  - (i) “Risk Assessment” means the assessment required by paragraph 3 below;
  - (j) “Risk Assessment Report” means the report required by paragraph 4 below; and
  - (k) “Training” means the training required by paragraph 6 and 7 below.

### **Compliance Officer**

2. GEMWIDE TRADING must, within one month of the commencement date of the Enforceable Undertaking, appoint a director of the company or a person approved by all the directors of the company, as its Compliance Officer, with responsibility for ensuring that the requirements concerning risk assessment and training, and product safety compliance procedures set out in this document are implemented and maintained.

### **Risk Assessment**

3. The Compliance Officer must, within one month of the commencement date of the Enforceable Undertaking, conduct a risk assessment or appoint a person who has experience with mandatory standards and compliance systems to conduct a risk assessment to:

- (a) identify the areas of GEMWIDE TRADING's business where it is at risk of contravening the Relevant Provision;
- (b) assess the likelihood of any such contravention re-occurring;
- (c) identify where there are deficiencies in GEMWIDE TRADING's procedures for managing such risk;
- (d) making findings concerning sub-paragraphs (a) to (c) above;
- (e) make recommendations for action having regard to sub-paragraphs (a) to (d) above; and
- (f) implement the recommendations within one month of the risk assessment exercise.

### **Risk Assessment Report**

- 4. The assessor must set out the findings of the risk assessment exercise in a written report (Risk Assessment Report) within two months of the conclusion of the risk assessment exercise and make it available should the Director or his nominee request a copy at any time the Undertaking remains in effect.
- 5. The Compliance Officer must, at the time of the risk assessment exercise, subscribe to the Product Safety Australia Web Alerts <https://www.productsafety.gov.au/newsletter/subscribe> to ensure that any new regulations or restrictions affecting goods that the company is or may be supplying in the future are brought to his attention for requisite compliance systems to be implemented.

### **Training**

- 6. The Compliance Officer must, after the risk assessment exercise, receive practical training regarding the product safety provisions in Parts 3-3 and 3-4 of the ACL and that the practical training include the areas of GEMWIDE TRADING's business where it is at risk or is likely to be at risk of contravening the Relevant Provision, as identified in the Risk Assessment Report.
- 7. GEMWIDE TRADING will ensure that the training is administered by a person who has experience with mandatory standards, bans and compliance systems.

### **Product Safety Compliance System**

- 8. The Compliance Officer must:



- (a) satisfy himself that his supplier has the capacity to meet the requirements of all relevant and applicable:
  - (i) mandatory safety or information standards; and/or
  - (ii) interim or permanent ban orders – affecting goods that the company is or may be supplying in the future (“the Standards”); and
- (b) ensure that GEMWIDE TRADING keeps records of all orders for goods made in the future and that each such order must specify that goods to be acquired for supply by the company, in future, must conform with the requirements of the Standards and bans.

9. GEMWIDE TRADING will:

- (a) ensure that:
  - (i) where possible, all goods of the type of class to which the Standards apply acquired by GEMWIDE TRADING for supply, are tested by a competent NATA testing authority to confirm that they conform to the Standard; and
  - (ii) goods of the type of class to which the Standards apply are not supplied by GEMWIDE TRADING unless they have been tested as provided for in paragraph (i) above and conform with the relevant and applicable Standards;
- (b) develop a checklist setting out the labelling requirements of the relevant and applicable Standards and bans and use such checklist in line with a procedure developed for batch checking when goods arrive from suppliers;
- (c) withdraw goods of the type of class to which the Standards and bans apply from supply until such time they conform with the relevant and applicable Standards;
- (d) maintain records of such checklist; and
- (e) develop and implement a public complaint handling system and make such complaint handling system accessible from any website of which the company is the Registrant and upon which the company advertise or offers for supply, goods.

10. Further, the Compliance Officer must:

- (a) monitor that the checklists have been completed after the arrival of each batch of goods of the type of class to which the Standards and bans apply and that the obligations and procedures provided for under paragraph 10 above are applied to such goods where non-conformance with the relevant and applicable Standards and bans is detected;
- (b) maintain up-to-date copies of all prescribed consumer product safety Standards that relate to products that the company supplies; and

- (c) maintain files (or soft copies) of:
    - (i) Order forms;
    - (ii) Testing results;
    - (iii) Checklist procedures;
    - (iv) Completed visual checklists; and
    - (v) Risk assessments.
11. GEMWIDE TRADING must, within the periods or on the dates provided for in the Enforceable Undertaking, provide the Director with the required documents or information.

