



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:

**Lost (SA) Pty Ltd (ACN 099 102 253) and
Loucas KOUNNAS (director), trading as Bargain City Newton, ABN 76 899 682 578**

1. PERSONS GIVING THIS UNDERTAKING

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs (the Commissioner) by Loucas Kounnas (Mr Kounnas) and Lost (SA) Pty Ltd, 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. Bargain City Newton is a registered business name with the Australian Securities and Investments Commission, and Mr Kounnas is registered as the sole proprietor.
- 2.2. Bargain City Newton is a discount store that supplies a variety of goods, including children's toys. The business is conducted at Unit 1, 297 Montacute Road, Newton, South Australia.
- 2.3. Lost (SA) Pty Ltd, ACN 099 102 253, is incorporated under the *Corporations Act 2001*.
- 2.4. Mr Kounnas is the current director of the company Lost (SA) Pty Ltd.

3. RELEVANT PROVISIONS

- 3.1. Pursuant to section 114 of the ACL the Commonwealth Minister may, by written notice published on the internet, impose a permanent ban on consumer goods of a particular kind.
- 3.2. Sections 118 and 197 of the ACL prohibit 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 permanent ban on consumer goods of that kind is in force.
- 3.3. *Consumer Protection Notice No. 5 of 2012 – Imposition of permanent ban on small, high powered magnets* (permanent ban) prohibits the supply of separable or loose magnets that meet certain size and strength criteria, and that are marketed as a toy, game, puzzle, a construction or modelling kit, or jewellery to be worn in or around the mouth or nose.

4. CONDUCT OF CONCERN

- 4.1. On 9 November 2017, Compliance and Investigations Officers from Consumer and Business Services (CBS) conducted surveillance at Bargain City Newton, and purchased a Rattlesnake Egg Singing Magnets set (Rattlesnake magnet set) that was on display for sale.
- 4.2. The Rattlesnake magnet set is a set of two oval shape magnets, measuring approximately 35mm x 12mm.
- 4.3. CBS requested that Mr Kounnas provides evidence of the magnetic flux index of each of the magnets within the Rattlesnake magnet set.

- 4.4. Mr Kounnas was unable to provide CBS with evidence to show that the Rattlesnake magnet set is excluded from the particulars of the permanent ban.
- 4.5. Laboratory testing commissioned by CBS determined that each magnet within the Rattlesnake magnet set has a magnetic flux index greater than $50 \text{ (kG)}^2 \text{ mm}^2$. The Rattlesnake magnet set is captured by the permanent ban on small, high powered magnets.

5. CONTRAVENTIONS

- 5.1. The Commissioner considers, and Lost (SA) Pty Ltd acknowledges, that by engaging in the conduct described in paragraph 4 above, it is likely that it has:
 - 5.1.1. Supplied a Rattlesnake magnet set that is captured by a permanent ban, in breach of sections 118(1) and 197(1) of the ACL;
 - 5.1.2. Offered for supply a Rattlesnake magnet set that is captured by a permanent ban, in breach of sections 118(2) and 197(2) of the ACL; and
 - 5.1.3. Possessed and had control of a Rattlesnake magnet set that is captured by a permanent ban, in breach of sections 118(3) and 197(3) of the ACL.
- 5.2. The Commissioner considers, and Mr Kounnas acknowledges, that as sole director of Lost (SA) Pty Ltd, it is likely Mr Kounnas was knowingly concerned in the contravention of section 118(3) by Lost (SA) Pty Ltd or aided, abetted, counselled or procured Lost (SA) Pty Ltd to commit a contravention of s 197(3) of the ACL.

6. VOLUNTARY RECALL

- 6.1. On the recommendation of CBS, Mr Kounnas submitted a national voluntary recall for the Rattlesnake magnet set with the Australian Competition and Consumer Commission (ACCC), which the ACCC published on the Product Safety Australia website on 5 March 2018.
- 6.2. The recall notification instructed consumers who purchased the Rattlesnake magnet set to stop using the product and return it to Bargain City Newton for a full refund.

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

- 7.1. Mr Kounnas and Lost (SA) Pty Ltd give the following undertakings to the Commissioner for the purpose of section 218 of the ACL:
 - 7.1.1. Mr Kounnas and Lost (SA) Pty Ltd will not supply, offer for supply, or possess/have control of goods that are captured by a permanent ban, in accordance with the requirements of the ACL.
 - 7.1.2. Mr Kounnas will implement a written product safety compliance program within three 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 Mr Kounnas is 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. Mr Kounnas will nominate a person responsible for the implementation and maintenance of the product safety compliance program.

7.1.2.4. Mr Kounnas will implement and conduct training for relevant staff within four months of signing this Undertaking, and then annually, to ensure that the product safety compliance program is understood and obeyed.

7.1.2.5. Mr Kounnas will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 7.1.2.4., and will provide this to CBS within one 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 Mr Kounnas and Lost (SA) Pty Ltd; and

8.1.2. The Commissioner accepts the Undertaking so executed.

9. ACKNOWLEDGEMENTS

9.1. Mr Kounnas and Lost (SA) Pty Ltd acknowledge that:

9.1.1. CBS will make this undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website;

9.1.2. The ACCC may make this undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety Australia website;

9.1.3. CBS may, from time to time, make public reference to the undertaking including in news media statements and in CBS publications;

9.1.4. This undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct; and

9.1.5. This undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

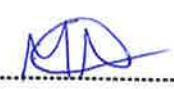
EXECUTED BY Loucas Kounnas, in his personal capacity, and director of Lost (SA) Pty Ltd



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Signature Loucas Kounnas

Date: 26/02/19



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Signature of Witness

Name: Melissa Nolan -

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: 4/3/19