

COMPETITION AND CONSUMER ACT 2010

SECTION 134A

INFRINGEMENT NOTICE ISSUED TO

NEW AIM PTY LYD

TO: New Aim Pty Ltd (ACN 115 804 432)
Unit 4, 313-327 Arden Street
Kensington Victoria 3031

INFRINGEMENT NOTICE NUMBER: 1314-125

1. The Australian Competition and Consumer Commission (the ACCC):
 - (a) has reasonable grounds to believe that New Aim Pty Ltd ACN 115 804 432, trading as OzPlaza.Living (New Aim), has contravened section 106(1) of the *Australian Consumer Law (ACL)*, contained in Schedule 2 of the *Competition and Consumer Act 2010 (the Act)*, as set out in Schedule 1 to this Infringement Notice; and
 - (b) has decided to issue this Infringement Notice to New Aim under section 134A of the Act.
2. Section 106(1) of the ACL is an Infringement Notice provision within the meaning of section 134A(2) of the Act.
3. The Infringement Notice penalty is \$10,200.

WHAT CAN NEW AIM DO IN RESPONSE TO THIS INFRINGEMENT NOTICE?

4. New Aim can choose whether or not to comply with this Infringement Notice. If New Aim chooses not to comply with this Infringement Notice, the ACCC may commence proceedings against it in relation to the alleged conduct described in Schedule 1.
5. If New Aim chooses to comply with this Infringement Notice, it must pay the Infringement Notice penalty to the ACCC, on behalf of the Commonwealth, within 28 days beginning on the day after the day on which this Infringement Notice is issued (the compliance period).
6. To ensure payment is made in accordance with this notice, payment must be received on or before 4 July 2014.

HOW DOES NEW AIM PAY THE INFRINGEMENT NOTICE PENALTY?

7. New Aim can pay the \$10,200 Infringement Notice penalty in two ways:
- (a) by cheque made out to the Australian Competition and Consumer Commission, enclosing a copy of this Infringement Notice to:
ACCC
GPO Box 3131
Canberra ACT 2601
You should allow at least 5 business days for payment to be received.
- Or
- (b) by electronic funds transfer to the following account:
Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: 1314-125
Please ensure that you include this number in the description field of your electronic funds transfer to identify payment.
You should allow at least 2 business days for payment to be received.
8. Please allow sufficient time for your payment to be received by the ACCC within the compliance period.
9. You will be issued with a Tax Invoice following payment of this Infringement Notice.

MORE INFORMATION

10. Schedule 2 provides important information about this Infringement Notice, including the consequences for New Aim of paying or not paying the Infringement Notice penalty within the compliance period. A copy of the relevant sections of the Act is provided in Schedule 3.
11. You may discuss this Infringement Notice by contacting:

Rob Ghali
General Manager
Enforcement Group NSW

Telephone: (02) 9230 9144
Email: Rob.Ghali@accc.gov.au
Post: Rob Ghali
General Manager
Enforcement Group NSW
GPO Box 3648
Sydney NSW 2001

DATE OF ISSUE: 6 day of June 2014



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Rodney Graham Sims
Chairman
Australian Competition and Consumer Commission

SCHEDULE 1

THE CONDUCT OF NEW AIM ALLEGED TO BE IN CONTRAVENTION OF THE ACT

Section 106(1) of the ACL provides that a person must not, in trade or commerce, supply consumer goods of a particular kind if:

- (a) a safety standard for consumer goods of that kind is in force; and
- (b) those goods do not comply with that standard.

On 11 June 2013, New Aim, in trade or commerce, supplied a Wooden Sleigh 3 in 1 branded household cot (**the Sleigh Cot**) being a consumer good that did not comply with the safety standard in force in respect of household cots, namely the safety standard contained in *Consumer Protection Notice No. 6 of 2005 Consumer Product Safety Standard: Household Cots*, which declares that the consumer product safety standard for children's household cots is Australian/New Zealand Standard AS/NZS 2172:2003 titled *Cots for household use – Safety requirements*, as varied (**the Safety Standard**).

Specifically, the Sleigh Cot failed to comply with the following clauses of the Safety Standard:

- Clause 6.1(g), in that gap between the Sleigh Cot's mattress base and the drop side lower rail allowed a 30 mm probe to pass through with a force less than 50 newtons.
- Clause 6.3(d), in that both the Sleigh Cot's lift and drop-side fastening devices operated with less than the minimum required force of 50 newtons.
- Clause 6.4(a), in that the Sleigh Cot's drop-side did not always fall freely upon disengagement, as required.
- Clause 6.8(b), in that the Sleigh Cot contained an edge which had a radius of less than the minimum required radius of 2 mm.
- Clause 9.2(b), in that the gap between the Sleigh Cot's mattress base and the drop side lower rail allowed a 30 mm probe to pass through with a force less than 50 newtons.
- Clauses 9.4, 9.5 and 9.7, in that the joints between the Sleigh Cot's slats and the drop side top rail separated when tested in the required manner, resulting in failures of the 'strength test', the 'drop side load test' and the 'durability of drop side mechanism' test.
- Clause 12.1, in that the Sleigh Cot lacked the required label on the mattress base containing information and/or required warnings about:
 - the importer's name and address;

- the country of origin;
 - the recommended mattress size;
 - using the lowest position mattress base before the child can sit up;
and
 - the month and year of manufacture.
- Clause 12.2, in that the warnings on the label inside the Sleigh Cot's drawer were not in bold font and were only 3.5 mm high, rather than 5 mm high as required.

SCHEDULE 2

EXPLANATION OF SECTIONS OF THE ACT CONCERNING INFRINGEMENT NOTICES

PLEASE READ THE FOLLOWING INFORMATION CAREFULLY

Complying with the Infringement Notice

Unless the Infringement Notice is withdrawn by the ACCC during the compliance period, payment of the Infringement Notice penalty within the compliance period will prevent the ACCC from taking legal action against the person to whom the Infringement Notice is issued (the Infringement Notice recipient) in relation to the alleged conduct described in Schedule 1.

Payment of the Infringement Notice penalty by the Infringement Notice recipient does not amount to an admission or finding that the Infringement Notice recipient has contravened the Act by engaging in the alleged conduct described in Schedule 1.

The ACCC will, from time to time, make public reference to Infringement Notices that have been paid by recipients including in media statements and in ACCC publications containing information about the alleged conduct of the Infringement Notice recipient described in Schedule 1 and the fact that your compliance with the Infringement Notice does not amount to an admission or finding that the Act has been contravened.

Failing to comply with the Infringement Notice

If you do not pay the Infringement Notice penalty within the compliance period, and the ACCC has not withdrawn the Infringement Notice, the ACCC may take civil or criminal legal action (if applicable) against the Infringement Notice recipient in relation to the alleged conduct described in Schedule 1.

The maximum penalty a court could order against New Aim in relation to the alleged conduct described in Schedule 1 is \$1.1 million.

Compliance period

The compliance period for an Infringement Notice is 28 days beginning on the day after the day on which the Infringement Notice is issued.

The ACCC may extend the compliance period once for up to an extra 28 days if it is satisfied that it is appropriate to do so. The ACCC must notify the Infringement Notice recipient of the extension; however, failure to give notice will not affect the validity of the extension.

Withdrawal of the Infringement Notice

The Infringement Notice recipient can send a written request to the ACCC asking it to withdraw the Infringement Notice. The request should explain why the ACCC should withdraw the Infringement Notice and include any supporting documents.

Any evidence or information given to the ACCC by a person in support of such a request cannot be used as evidence against that person in any legal action (other than legal action for an offence based on providing false or misleading evidence or information).

The Infringement Notice recipient should ensure that any such request is received by the ACCC at the address on the attached cover letter as soon as possible and within the compliance period. As the ACCC must give a withdrawal notice to the Infringement Notice recipient within the compliance period in order for the withdrawal to be effective, please allow the ACCC as much time as possible to consider the request.

The ACCC will only withdraw the Infringement Notice during the compliance period if it is satisfied that it is appropriate to do so. The ACCC may do this after considering a written request by the Infringement Notice recipient, or it may withdraw the Infringement Notice without such a request.

The ACCC may withdraw the Infringement Notice even if the Infringement Notice recipient has already paid the Infringement Notice penalty. In such a case, the ACCC will refund the amount paid.

Schedule 2 explains the effect of sections 134D, 134E, 134F and 134G of the Act, as required by section 134B of the Act. It is not legal advice.

SCHEDULE 3

INFRINGEMENT NOTICES



Competition and Consumer Act 2010

Act No. 51 of 1974 as amended

Division 5—Infringement notices

134 Purpose and effect of this Division

- (1) The purpose of this Division is to provide for the issue of an infringement notice to a person for an alleged contravention of an infringement notice provision as an alternative to proceedings for an order under section 224 of the Australian Consumer Law.
- (2) This Division does not:
 - (a) require an infringement notice to be issued to a person for an alleged contravention of an infringement notice provision; or
 - (b) affect the liability of a person to proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law in relation to an alleged contravention of an infringement notice provision if:
 - (i) an infringement notice is not issued to the person for the alleged contravention; or
 - (ii) an infringement notice issued to a person for the alleged contravention is withdrawn under section 134G; or
 - (c) prevent a court from imposing a higher penalty than the penalty specified in the infringement notice if the person does not comply with the notice.

134A Issuing an infringement notice

- (1) If the Commission has reasonable grounds to believe that a person has contravened an infringement notice provision, the Commission may issue an infringement notice to the person.

- (2) Each of the following provisions of the Australian Consumer Law is an infringement *notice provision*:
- (a) a provision of Part 2-2;
 - (b) a provision of Part 3-1 (other than subsection 32(1), 35(1) or 36(1), (2) or (3) or section 40 or 43);
 - (c) subsection 66(2);
 - (d) a provision of Division 2 of Part 3-2 (other than section 85);
 - (e) a provision of Division 3 of Part 3-2 (other than subsection 96(2));
 - (f) subsection 100(1) or (3), 101(3) or (4), 102(2) or 103(2);
 - (g) subsection 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2), 125(4), 127(1) or (2), 128(2) or (6), 131(1), 132(1), 136(1), (2) or (3) or 137(1) or (2);
 - (h) subsection 221(1) or 222(1).
- (3) The Commission must not issue more than one infringement notice to the person for the same alleged contravention of the infringement notice provision.
- (4) The infringement notice does not have any effect if the notice:
- (a) is issued more than 12 months after the day on which the contravention of the infringement notice provision is alleged to have occurred; or
 - (b) relates to more than one alleged contravention of an infringement notice provision by the person.

134B Matters to be included in an infringement notice

An infringement notice must:

- (a) be identified by a unique number; and
- (b) state the day on which it is issued; and
- (c) state the name and address of the person to whom it is issued; and
- (d) identify the Commission; and
- (e) state how the Commission may be contacted; and
- (f) give details of the alleged contravention by the person, including:
 - (i) the date of the alleged contravention; and
 - (ii) the particular infringement notice provision that was allegedly contravened; and

- (g) state the maximum pecuniary penalty that the court could order the person to pay under section 224 of the Australian Consumer Law for the alleged contravention; and
- (h) specify the penalty that is payable in relation to the alleged contravention; and
- (i) state that the penalty is payable within the infringement notice compliance period for the notice; and
- (j) state that the penalty is payable to the Commission on behalf of the Commonwealth; and
- (k) explain how payment of the penalty is to be made; and
- (l) explain the effect of sections 134D, 134E, 134F and 134G.

134C Amount of penalty

The penalty to be specified in an infringement notice that is to be issued to a person, in relation to an alleged contravention of a provision of the Australian Consumer Law, must be a penalty equal to the amount worked out using the following table:

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
1	a provision of Part 2-2	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
2	a provision of Part 3-1 (other than subsection 32(1), 35(1), 36(1), (2) or (3), section 40 or 43 or subsection 47(1))	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
		penalty units; or
		(c) if the person is not a body corporate—12 penalty units.
3	subsection 47(1)	(a) if the person is a body corporate—10 penalty units; or
		(b) if the person is not a body corporate—2 penalty units.
4	subsection 66(2)	(a) if the person is a body corporate—55 penalty units; or
		(b) if the person is not a body corporate—11 penalty units.
5	a provision of Division 2 of Part 3-2 (other than section 85)	(a) if the person is a body corporate—60 penalty units; or
		(b) if the person is not a body corporate—12 penalty units.
6	a provision of Division 3 of Part 3-2 (other than subsection 96(2))	(a) if the person is a body corporate—55 penalty units; or
		(b) if the person is not a body corporate—11 penalty units.
7	subsection 100(1) or (3) or 101(3) or (4)	(a) if the person is a body corporate—20 penalty units; or
		(b) if the person is not a body corporate—4 penalty units.
8	subsection 102(2) or 103(2)	(a) if the person is a body corporate—60 penalty units; or
		(b) if the person is not a body corporate—12 penalty units.

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
9	subsection 106(1), (2), (3) or (5), 107(1) or (2), 118(1), (2), (3) or (5), 119(1) or (2)	<p>(a) if the person is a listed corporation—600 penalty units; or</p> <p>(b) if the person is a body corporate other than a listed corporation—60 penalty units; or</p> <p>(c) if the person is not a body corporate—12 penalty units.</p>
10	subsection 125(4)	<p>(a) if the person is a body corporate—30 penalty units; or</p> <p>(b) if the person is not a body corporate—6 penalty units.</p>
11	subsection 127(1) or (2)	<p>(a) if the person is a listed corporation—600 penalty units; or</p> <p>(b) if the person is a body corporate other than a listed corporation—60 penalty units; or</p> <p>(c) if the person is not a body corporate—12 penalty units.</p>
12	subsection 128(2) or (6), 131(1) or 132(1)	<p>(a) if the person is a body corporate—30 penalty units; or</p> <p>(b) if the person is not a body corporate—6 penalty units.</p>

Amount of penalty		
Item	If the infringement notice is for an alleged contravention of one of the following provisions of the Australian Consumer Law ...	the amount is ...
13	subsection 136(1), (2) or (3) or 137(1) or (2)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units.
14	subsection 221(1)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units.
15	subsection 222(1)	(a) if the person is a body corporate—50 penalty units; or (b) if the person is not a body corporate—10 penalty units.

134D Effect of compliance with an infringement notice

(1) This section applies if:

- (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
- (b) the person pays the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
- (c) the infringement notice is not withdrawn under section 134G.

(2) The person is not, merely because of the payment, regarded as:

- (a) having contravened the infringement notice provision; or
- (b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the infringement notice provision.

- (3) No proceedings (whether criminal or civil) may be started or continued against the person, by or on behalf of the Commonwealth, in relation to:
- (a) the alleged contravention of the infringement notice provision; or
 - (b) an offence constituted by the same conduct that constituted the alleged contravention.

134E Effect of failure to comply with an infringement notice

If:

- (a) an infringement notice for an alleged contravention of an infringement notice provision is issued to a person; and
- (b) the person fails to pay the penalty specified in the infringement notice within the infringement notice compliance period and in accordance with the notice; and
- (c) the infringement notice is not withdrawn under section 134G;

the person is liable to proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law in relation to the alleged contravention of the infringement notice provision.

134F Infringement notice compliance period for infringement notice

- (1) Subject to this section, the *infringement notice compliance period* for an infringement notice is the period of 28 days beginning on the day after the day on which the infringement notice is issued by the Commission.
- (2) The Commission may extend, by notice in writing, the infringement notice compliance period for the notice if the Commission is satisfied that it is appropriate to do so.
- (3) Only one extension may be given and the extension must not be for longer than 28 days.
- (4) Notice of the extension must be given to the person who was issued the infringement notice.
- (5) A failure to comply with subsection (4) does not affect the validity of the extension.
- (6) If the Commission extends the infringement notice compliance period for an infringement notice, a reference in this Division to the infringement notice compliance period for an infringement notice is taken to be a reference to the infringement notice compliance period as so extended.

134G Withdrawal of an infringement notice

Representations to the Commission

- (1) The person to whom an infringement notice has been issued for an alleged contravention of an infringement notice provision may make written representations to the Commission seeking the withdrawal of the infringement notice.
- (2) Evidence or information that the person, or a representative of the person, gives to the Commission in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal by the Commission

- (3) The Commission may, by written notice (the *withdrawal notice*) given to the person to whom an infringement notice was issued, withdraw the infringement notice if the Commission is satisfied that it is appropriate to do so.
- (4) Subsection (3) applies whether or not the person has made representations seeking the withdrawal.

Content of withdrawal notices

- (5) The withdrawal notice must state:
 - (a) the name and address of the person; and
 - (b) the day on which the infringement notice was issued to the person; and
 - (c) that the infringement notice is withdrawn; and
 - (d) that proceedings under Chapter 4 or Part 5-2 of the Australian Consumer Law may be started or continued against the person in relation to:
 - (i) the alleged contravention of the infringement notice provision; or
 - (ii) an offence constituted by the same conduct that constituted the alleged contravention.

Time limit for giving withdrawal notices

- (6) To be effective, the withdrawal notice must be given to the person within the infringement notice compliance period for the infringement notice.

Refunds

- (7) If the infringement notice is withdrawn after the person has paid the penalty specified in the infringement notice, the Commission must refund to the person an amount equal to the amount paid.