

**Undertakings to the Commerce Commission under  
s 46A of the Fair Trading Act 1986**

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**Baby City Retail Investments Limited**

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## 1. Person giving undertaking

- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FTA**) by Baby City Retail Investments Limited (Company Number 3750782) a company incorporated in New Zealand having its registered office at Gibson Sheat, 1 Margaret Street, Hutt Central, Lower Hutt 5010.
- 1.2 In these Undertakings **Baby City** means Baby City Retail Investments Limited.

## 2. Background

- A Baby City is a retailer of household cots and other products in New Zealand.
- B From October 2014 to October 2015, the Commission investigated whether the Milano 3-in-1 Sleigh style cot and Milano Phoenix cot offered for sale by Baby City complied with the prescribed product safety standard for household cots adopted under the Product Safety Standards (Household Cots) Regulations 2005, issued pursuant to section 29 of the FTA (**Standard**). In these Undertakings, Standard refers to any replacement for the Standard that is passed or adopted into law in New Zealand.
- C On 9 March 2016, the Commission initiated proceedings in the Auckland District Court against Baby City as CRI-2016-004-002387 (**Proceedings**), which comprised nine charges under s 30 of the Fair Trading Act 1986, alleging breaches of the Standard. Six of the charges related to packaging and labelling requirements (**Packaging Charges**) and the other three charges concerned structural aspects of household cots supplied by Baby City (**Structural Charges**).
- D On 14 June 2016, Baby City entered pleas of guilty to the Packaging Charges and pleas of not guilty to the Structural Charges.
- E The Commission has indicated it will withdraw the Structural Charges if Baby City provides appropriate enforceable undertakings in the form set out in this document (**Undertakings**).



### 3. Purpose of the Undertakings

3.1 The Undertakings are given by Baby City in order to satisfy the Commission that:

- (a) Baby City will maintain procedures to ensure that all household cots it supplies or offers to supply in New Zealand comply with the Standard; and
- (b) It is not in the public interest to proceed with the Structural Charges.

3.2 Baby City confirms its intention to supply or offer to supply household cots in New Zealand only if those cots comply with the Standard in every relevant respect.

### 4. Undertakings

4.1 Baby City undertakes to the Commission to do the following:

- (a) To ensure that each model of household cot that it supplies or offers to supply in New Zealand has been tested to the Standard by an independent and reputable testing facility (**Testing Facility**) and found to comply with the Standard in every relevant respect.
- (b) To obtain a written report from any Testing Facility that conducts the testing described in paragraph 4.1(a), which report shall state whether the household cots comply with the relevant individual requirements of the Standard (**Testing Process Report**).
- (c) To review each Testing Process Report against the Standard and satisfy itself that the Testing Process Report confirms that the household cots tested comply with the Standard in every relevant respect before they are supplied or offered for supply.
- (d) In the event that a Testing Process Report does not provide satisfactory confirmation of compliance with the Standard in any respect, to require further testing or reporting until such confirmation is received, before the relevant household cots are supplied or offered for supply.
- (e) To ensure that the testing process described above in paragraph 4.1(a) is repeated as required to confirm that subsequent batches or shipments of a previously tested model of household cot continue to comply with the Standard. At a minimum, Baby City shall ensure that testing of a model of household cot is renewed:
  - (i) at least every three (3) years; and
  - (ii) any time there is a change in manufacturer; or
  - (iii) any time there is a change in manufacturing specifications; or
  - (iv) any time Baby City receives information, whether from a consumer, regulator or other source, indicating that a previously tested model of household cot has defects such that it may not comply with the Standard, provided, however, that Baby City shall not be required to renew testing if: (a) the information referred to in this subparagraph relates to a single cot; and (b) after conducting a thorough inquiry, Baby City is satisfied that the defect is isolated to that individual cot and is not present in other cots.
- (f) To inspect a sample household cot from every shipment received and satisfy itself that all wording required by the labelling and marking requirements of the Standard is present before cots from that shipment are supplied or offered for supply.
- (g) To maintain a process under which each household cot that is assembled for display in store is checked by a staff member against a checklist designed to highlight any visible



defects that may constitute non-compliance with the Standard, that are likely to become apparent on assembly.

- (h) To retain documents recording compliance with paragraphs 4.1(a) to (f) above and provide them to the Commission upon request.

## **5. Effect of the Undertakings**

5.1 The Undertakings:

- (a) Are Court enforceable undertakings in terms of s 46A of the FTA;
- (b) Are made without admission of guilt by Baby City as to its conduct pre and post the Undertakings with respect to the Structural Charges; and
- (c) Are made without prejudice to the Commission's ability to bring proceedings and/or seek orders from the Court in relation to Baby City's conduct before or after the Undertakings come into effect, provided that the Commission shall not bring proceedings or seek Court orders in relation to conduct subject to the Packaging and Structural Charges.

## **6. Commencement of the Undertakings**

6.1 The Undertakings come into effect when:

- (a) The Undertakings are executed by Baby City; and
- (b) The Commission confirms its acceptance of the Undertakings.

## **7. Variation of the Undertakings**

7.1 The Commission and Baby City may agree at any time to vary the Undertakings.

7.2 No variation of the Undertakings will be effective unless in writing, executed by Baby City and signed as accepted by the Commission.

## **8. Duration of the Undertakings**

8.1 The Undertakings will continue to have effect until the earlier of:

- (a) The Commission, for any reason, discharging Baby City from the Undertakings; or
- (b) Five (5) years from the date the Commission confirms its acceptance of the Undertakings.

## **9. Compliance with the Undertakings**

9.1 If Baby City becomes aware of a breach of these Undertakings, whether intentional or inadvertent, it will notify the Commission within seven (7) days of becoming so aware, giving full particulars of the breach to the extent known to Baby City.

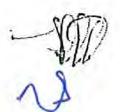
9.2 If the Commission has a good faith basis to believe that Baby City has not complied with the Undertakings, and requests Baby City to do so, Baby City will engage, at Baby City's own cost, a reputable third party approved by the Commission (**Reviewer**) to conduct a review of Baby City's compliance with the Undertakings (**Compliance Audit**) and report its findings to the Commission and to Baby City.



- 9.3 Baby City will comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.
- 9.4 For the avoidance of doubt, nothing in clauses 9.1 to 9.3 above prevents the Commission from directly seeking any information from Baby City at any time during the course of an investigation for the purpose of checking compliance with the Undertakings.

## **10. Miscellaneous**

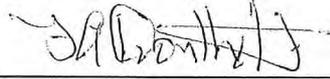
- 10.1 These Undertakings may be executed and accepted in counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Undertakings.
- 10.2 Baby City acknowledges that:
- (a) The Commission may make the Undertakings publicly available by publishing them on the Commission's enforcement response register on its website;
  - (b) The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications; and
  - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or any other person, to take action under the FTA or under any other statute or law.



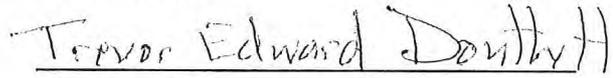
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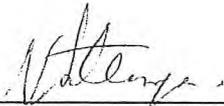
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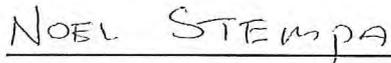
Signature of director



Name of director

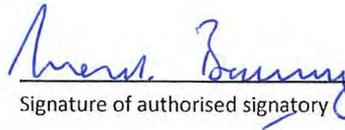


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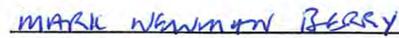


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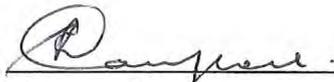
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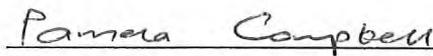
Signature of authorised signatory



Name of authorised signatory



Witness signature



Name of witness