

WALKER, HEDGES & CO.

SOLICITORS

(INCORPORATING THE PRACTICE OF T.H. WALKER & CO.)

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Your ref: CP
Our ref: LB:LC:201038

20 March 2002

The State Director
Australian Competition
& Consumer Commission
PO Box 520J
MELBOURNE VIC 3001



Attention: Colin Pennell

Dear Sir

ACCC and Golden Sun Australia Pty Ltd

We refer to previous correspondence and in particular to your letter dated 26 February 2002 which had enclosed with it undertaking pursuant to section 87B.

We advise that we have perused the undertaking and forwarded same for perusal and execution by our client. We enclose executed undertaking dated 18 March 2002 with respect to the design and implementation of a Trade Practices Compliance Program we ask the Commission for direction in that regard and whether the Commission has a standard form compliance program for a business the size of our client which we note is a very small player in the market with three to four persons involved in the business.

If the Commission has such compliance program could you advise of same and costs for purchase of the program so that we can forward such advice to our client for their further instructions. If the Commission does not have such a program could the Commission advise as to where such program could be purchased for implementation by our client or in the alternative the names and phone numbers of organisations which may provide such compliance programs.

We look forward to receiving the above advice.

If the Commission requires any further information with respect to the matter please do not hesitate to contact us.

Yours faithfully
Walker, Hedges & Co.


Luke Bhatt

FILE No.

ENTITY

DMAN 002/14959

enc

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

GOLDEN SUN AUSTRALIA PTY LTD
ACN 085 153 028

BACKGROUND

1. Golden Sun Australia Pty Ltd (A. C. N. 085 153 028) ("Golden Sun") is incorporated under the Corporations Law and registered in the State of New South Wales.
2. Golden Sun conducts the business of importer which involves the importation, amongst other things, of automotive tools and equipment. In 2001 Golden Sun imported into Australia one hundred and fifty (150) hydraulic trolley jacks with a nominated 2 1/4 ton (equivalent 2250kg) lifting capacity. Sixteen (16) of these jacks were distributed to wholesalers for supply by retail sale.
3. Hydraulic trolley jacks (up to and including those nominated as having a 2.5 tonne capacity) sold in Australia are required to comply with the mandatory consumer product safety standard which is based on Australian/New Zealand Standard AS/NZS 2615:1995 (*hydraulic trolley jacks*) ("the Standard").
4. Section 65C of the Trade Practices Act 1974 ("the Act") prohibits a company from supplying consumer goods that do not comply with mandatory product safety standards. Following an investigation by the Australian Competition and Consumer Commission ("the Commission"), the Commission reached the view that Golden Sun had contravened section 65C of the Act in relation to supply by it of hydraulic trolley jacks to its wholesale distributors.
5. The Standard aims to reduce the risk of injury and death resulting from the improper use or failure of these products through the establishment of performance requirements and safe usage directions. It is a supplier's responsibility to ensure its product complies with the mandatory requirements set down by the Standard. In particular, the Standard prescribes a number of information requirements, which include the following:

Clause 7.1 of the Standard requires the jack to be permanently and legibly marked in English with the following:

- *The nominated capacity stated as "Safe Working Load..." in kilograms;*

- *A warning notice bearing words to the effect that the jack only be used on hard level surfaces, not to get under a vehicle that is only supported by a trolley jack and to use support stands;*
- *Clear and adequate operating instructions for the trolley jack;*
- *A statement specifying the correct hydraulic fluid for use with the trolley jack and a requirement that it be kept at the recommended level;*
- *Name and address in Australia or New Zealand of the manufacturer, importer or other suppliers of the trolley jack; and,*
- *The manufacturing batch identification.*

Clause 7.2.1 of the Standard requires that the following shall be clearly marked on the packaging of the jack:

- *The “height lowered” in millimetres, being the minimum height of the head cap;*
- *The “height raised” in millimetres, being the maximum height of the head cap; and,*
- *The nominated capacity stated as “Safe Working Load”in kilograms.*

6. The hydraulic trolley jacks supplied by Golden Sun did not comply with the above mentioned Marking requirements of the Standard.
7. The Commission raised its concerns about the non-complying hydraulic trolley jacks with Golden Sun in June 2001. In an effort to address the Commission’s concerns, Golden Sun ceased further supply of the non-complying hydraulic trolley jacks. It also indicated it would take immediate steps to ensure the hydraulic trolley jacks it had supplied conformed with the Marking requirements of the Standard.
8. Additionally, Golden Sun voluntarily arranged limited testing of one of the hydraulic trolley jacks for compliance with the design and construction, performance, marking and instruction requirements of the Standard by an appropriately accredited testing authority. The test results indicated, amongst other things, that the hydraulic trolley jack failed to comply with Clause 6.6 of the Standard which provides a test for the jack’s overload capacity. Failures to comply were also identified in relation the marking and instruction requirements of the Standard. In view of these failures Golden Sun recalled all hydraulic trolley jacks it had supplied to its wholesale distributors.
9. Golden Sun acknowledges and admits that its supply of the hydraulic trolley jacks described above contravened 65C of the Act.

COMMENCEMENT OF UNDERTAKINGS

10. This Undertaking comes into effect when:
 - a) the Undertaking is executed by Golden Sun; and
 - b) The Commission accepts the Undertaking so executed.

UNDERTAKINGS

Golden Sun undertakes to the Commission for the purposes of section 87B that:

11. It will not in future supply any products that do not fully comply with the relevant mandatory consumer product safety and information standards which may apply to such products.
12. In a period of not less than four months and not more than six months of this Undertaking taking effect, it will design, implement and make provision to maintain and audit, at its own expense, a Trade Practices Compliance Program ("Compliance Program") that is in accordance with the Australian Standard for Compliance Programs AS-3806 relating to those provisions of the Act which are relevant to the conduct of its business which:
 - (a) demonstrates commitment to a policy of compliance and will embed a culture of compliance throughout Golden Sun.
 - (b) analyses and responds to the trade practices matter resulting in this Undertaking.
 - (c) identifies risk areas for trade practices contraventions and develops systems to eliminate or minimise these risks.
 - (d) provides that Golden Sun will take appropriate action concerning any person within its control who is responsible for contraventions of the Act and will not indemnify any such person from the consequences of suit or settlement in respect of any contravention of the Act.
 - (e) provides practical and verifiable training for all relevant staff and management so that contraventions and potential contraventions of the Act may be prevented or otherwise detected, referred and acted upon.
13. In respect of Clause 12 above the Compliance Program will incorporate the following elements:

Commitment

- (a) Publication to all directors, employees and agents of Golden Sun of a written policy of commitment to compliance.
- (b) Ensuring that compliance is a standing item at Board meetings.
- (c) Appointment and training of a Compliance Officer with overall responsibility for compliance.
- (d) Implementation of adequate procedures to monitor compliance.

- (e) Ensuring that all directors and employees, and relevant third parties such as distributors, advertising representatives and other agents, understand compliance procedures.

Compliance manual

- (f) A Compliance Manual documenting the essential features of the Compliance Program, will be prepared and copied to the Commission.

Policy and procedures

- (g) Implementation of procedures to ensure that the compliance policy is understood by directors, employees and agents of Golden Sun.
- (h) Ensuring procedures are established to assess compliance against predetermined objectives and assessment criteria.

Management responsibility

- (i) Identification of processes involved in designing, implementing and maintaining the compliance program and the roles and responsibilities of directors, employees and agents.
- (j) Ensuring that line managers are responsible for compliance in their immediate area.

Resources and authority

- (k) Ensuring that the Compliance Officer has:
 - A authority, recognition and support from directors and managers;
 - B access to all directors, employees and agents to ensure compliance; and
 - C overall responsibility for design, implementation, maintenance and audit of the compliance program.
- (l) Ensuring that directors, employees and agents have access to necessary materials including compliance manuals, training, reference material and databases.
- (m) Ensuring that any external compliance service providers have the resources and expertise necessary to carry out the required tasks.

Continuous improvement

- (n) Implementation of procedures to ensure that the program is continuously reviewed.

Operating procedures for compliance

- (o) Integration of compliance considerations into other aspects of corporate operations such as operation of computer systems, drafting of forms and contracts, administrative procedures, financial evaluations, and performance evaluation of directors, employees and agents.

Training

- (p) Implementation of a practical and easily understood compliance training system for relevant staff which is:

- A integrated into induction courses;
- B reviewed at least every six months;
- C participatory;
- D verifiable by independent third parties;
- E framed to reflect areas of risk; and
- F part of line and senior manager development

Complaints handling system

- (q) Implementation of a visible and accessible complaints handling system which complies with Australian Standard AS 4269 when read together with Appendix A to Australian Standard AS 3806.

Record keeping

- (r) Keeping accurate record of instances of compliance failure and complaints, and of action taken to redress such instances.

Disciplinary policy

- (s) Implementation of a disciplinary policy for contraventions of the Act by directors, employees and agents, and publication of the policy to all such persons.
- (t) Ensuring that compliance is integrated into performance reviews for employees.

Identification and rectification

- (u) Development of a system to identify and classify instances of compliance failure and complaints so that systemic and recurring problems are rectified.

Reporting

- (v) Ensuring that compliance problems are promptly reported to the Compliance Officer.

Monitoring and review

- (w) Introduction of a system to monitor and review the effectiveness of the compliance program.

Accountability

- (x) Ensuring that the Compliance Officer is accountable to the Directors for compliance issues.

Audit of the trade practices compliance program

- (y) Golden Sun shall cause, at its own expense, an independent audit of its compliance program to be conducted:

- A within twelve months of the time at which this Undertaking takes effect;
- B upon each of the first two anniversaries of the time at which this Undertaking takes effect; and
- C on any additional occasions as the auditor determines necessary.

- (z) The audit will be conducted by a suitably qualified compliance professional who is independent of Golden Sun and has no conflict of interest or duty in providing audit services to it.

- (aa) The auditor will review and report in writing on:

- A Golden Sun's adherence to this Undertaking;
- B the particulars of the Compliance Program, its implementation of the Compliance Program and the achievement of its objectives; and
- C any recommended changes to the Compliance Program that may be necessary to ensure achievement of its objectives.

- (bb) The auditor will provide a copy of the audit report to the Commission within twenty one days of completion of the audit.

- (cc) If requested by the Commission, Golden Sun will provide forthwith to the Commission:

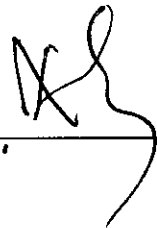
- A the name of the auditor;
- B the information upon which it relies in determining the auditor is independent from it; and
- C information showing whether any recommendations by the auditor have been implemented.


- 14. Golden Sun will update the Commission , within forty-five (45) days of this Undertaking taking effect, of its progress in implementing the Compliance Program.

ACKNOWLEDGEMENTS

- 15. Golden Sun acknowledges that the Commission will make this undertaking available for public inspection.
- 16. Golden Sun further acknowledges that the Commission will from time to time publicly refer to this undertaking.
- 17. Golden Sun further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.
- 18. Golden Sun further acknowledges the reports referred to in this Undertaking and the trade practices compliance program as in force from time to time may be held with this Undertaking on the Public Register.

IN WITNESS of these undertakings and its agreement the Common Seal of Golden Sun Australia Pty Ltd (A.C.N. 085 153 028) was hereunto affixed by authority of its Board of Directors in the presence of:


Director: _____ 

Director/Secretary: _____ 



DATED this 18 day of MARCH 2002

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

Chairman: _____ 

DATED this 9 day of April 2002