

**TRADE PRACTICES ACT 1974**

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

**BY  
SHERPA OUTDOOR EQUIPMENT PTY LTD  
ACN 084 998 023**

**BACKGROUND**

- (1) Sherpa Outdoor Equipment Pty Ltd, ACN 084 998 023, (Sherpa) sells a range of thermal clothing throughout Australia.
- (2) Sherpa's range of Thermal Underwear was incorrectly labelled as consisting of 95% polypropylene and 5% spandex. The garments actually consisted of 95% acrylic and 5% spandex.
- (3) The garments were packaged in a box which also carried the representation that the garments consisted of 95% polypropylene and 5% spandex. The packaging also contained a number of claims in respect to the properties of polypropylene which are not qualities found in acrylic. These properties include:

Superior thermal insulation, moisture resistance, quick drying, insulates when wet and recommended for sufferers of arthritis, rheumatism and influenza.
- (4) Following an investigation, the Australian Competition and Consumer Commission (ACCC) has reached the view that Sherpa was at risk of contravening the *Trade Practices Act 1974* (the Act) in that Sherpa made false or misleading representations in contravention of sections 52 and 53(a) of the Act. The ACCC considers Sherpa contravened sections 52 and 53(a) of the Act by:

incorrectly labelling thermal underwear as 95% polypropylene and 5% spandex when in fact the products were composed of fibres other than those listed, namely 95% acrylic and 5% spandex.
- (5) In January 1999 the ACCC brought to Sherpa's attention its view that the representations referred to in paragraph (2) above contravened sections 52 and 53(a) of the Act.
- (6) Sherpa admits that its goods were mislabelled, and says that this was a result of an error made by the relevant manufacturers in China.

## UNDERTAKINGS

### (7) **Future Conduct**

- (a) Sherpa undertakes not to package its thermal garments with false or misleading representations as to the fibre composition contrary to sections 52 and 53(a) of the Act.
- (b) Sherpa further undertakes to take all reasonable steps to remove the relevant garments from retail sale by attending to the matters set out in paragraph 7(c) of these undertakings.
- (c) On request, Sherpa will provide consumers who previously purchased the garment with a refund, or should the consumer choose, a replacement garment.
- (d) Prior to the garments being offered for resale Sherpa undertakes to relabel the garments and either remove the garments from its current packaging or alternatively place sufficient corrective stickers on the packaging to remove any misrepresentations.

### (8) **Corrective Notice**

Sherpa undertakes to place a 8cm X 2 columns wide notice in the form set out in Schedule A to these undertakings within twenty-one days or such other period as may be agreed upon by the Commission in the following publications:

The Australian newspaper  
The Sydney Morning Herald newspaper  
The Melbourne Age newspaper  
The Outdoor Australia magazine

### (9) **Corporate Compliance Program**

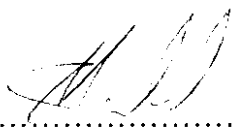
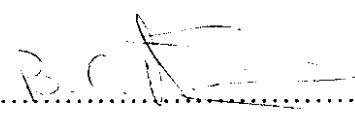
Within 3 months of the signing of this undertaking, develop with the assistance a firm of solicitors with expertise in trade practices law a check list of labelling and advertising steps and procedures. The Checklist will be submitted to the Commission within the three months for approval prior to implementation.

## ACKNOWLEDGEMENTS

- (10) Sherpa acknowledges that the Commission will make the undertaking available for public inspection.
- (11) Sherpa further acknowledges that the Commission may from time to time publicly refer to this undertaking.
- (12) Sherpa further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

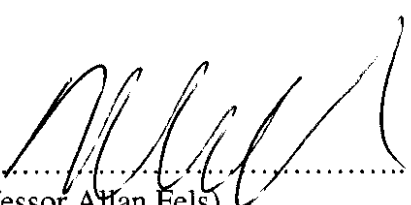
(13) Sherpa further acknowledges that the check-list referred to in paragraph (9) above will be held with this undertaking to the public register.

IN WITNESS of these undertakings  
And its agreement the common seal of  
SHERPA OUTDOOR EQUIPMENT PTY LTD (ACN 084 998 023)  
was hereunto affixed by authority of the  
Board of Directors in the presence of:

Secretary/Director .....  ..... Director .....  .....  
Name (Printed): ..... Simon KALLIT ..... Byron Maphyska .....

This Seventeenth day of November 1999

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

.....  .....  
(Professor Allan Fels)  
Chairperson

This 29 day of March 1999

## SCHEDULE A

*(Include Sherpa logo)*

**REFUND OFFER  
By SHERPA OUTDOOR  
EQUIPMENT PTY LTD (ACN 084 998 023)**

Management of Sherpa Outdoor Equipment Pty Ltd (ACN 084 990 023) wishes to advise that fibre content of Sherpa Polytherm Underwear contains 95% acrylic/5% spandex, not 95% polypropylene/5% spandex as advertised.

Consumers that have purchased this product are entitled to a refund, or should the consumer choose, a replacement garment, upon production of a labelled garment or an appropriate receipt by returning the garment to the stockist from where the garment was purchased, or contacting Sherpa Outdoor Equipment Pty Ltd (ACN 084 998 023) on (02) 9939 4244.

The Management of Sherpa Outdoor Equipment Pty Ltd (ACN 084 998 023) sincerely regrets this unintentional error.