

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v DUSK AUSTRALASIA PTY LTD (ACN 090 850 383)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



CONCISE STATEMENT

Federal Court of Australia

No. of 2026

District Registry: New South Wales

Division: General

Australian Competition and Consumer Commission
Applicant

Dusk Australasia Pty Ltd (ACN 090 850 383)
Respondent

I. OVERVIEW

1. A "button battery" or a "coin battery" (**a button battery**) is a small, circular-shaped battery. If swallowed or inserted, such a battery may lodge in a child's throat and cause serious injury or death within as little as two hours. Children up to five years of age are at greatest risk because of their narrower oesophagus and tendency to place small objects into their mouths, ears and noses.
2. This proceeding concerns the supply, offering for supply, and possession for the purposes of supply, of products containing button batteries by the Respondent (**Dusk**) in contravention of ss 106 and 136 of Schedule 2 (**the ACL**) of the *Competition and Consumer Act 2010* (Cth) (**the CCA**).
3. Those sections, in general terms, prohibit:
 - (a) the supply, offering for supply, or possession for the purposes of supply, of a product, for which a relevant safety standard is in force with which the product does not comply; and
 - (b) the supply, offering for supply, or possession for the purposes of supply, of a product, for which a relevant information standard is in force with which the product does not comply.
4. On 27 April 2023, the ACCC accepted an enforceable undertaking (**the Undertaking**) from Dusk in which it admitted that it had supplied 7,720 units of Halloween-themed LED products that failed to comply with the *Consumer Goods (Products Containing*

Filed on behalf of the Applicant

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Button/Coin Batteries) Safety Standard 2020 (the **Safety Standard**) and the *Consumer Goods (Products Containing Button/Coin Batteries) Information Standard 2020* (the **Information Standard**) (together, the **Button Battery Standards**). In the Undertaking, Dusk undertook not to supply or offer for supply consumer goods containing, or designed to store or contain button batteries, if those goods do not comply with the Button Battery Standards for a period of three years.

5. In summary, the Applicant (**the ACCC**) alleges that between 17 May 2023 and 12 December 2024, Dusk supplied (and offered to supply) 54,635 units, across 25 product lines, to consumers that did not comply with the Safety Standard and supplied (and offered to supply) approximately 11,828 units across four different product lines to consumers that did not comply with the Information Standard. As a consequence, the ACCC also alleges that Dusk has contravened the undertaking given pursuant to s 87B of the CCA.

II. IMPORTANT FACTS GIVING RISE TO THE CLAIMS

6. Dusk operates approximately 150 stores across Australia, including two online stores. It is a wholly-owned subsidiary of Dusk Group Limited (ACN 603 018 131), a corporation that is listed on the Australian Securities Exchange.

The Safety Standard

7. On 22 June 2022, the Safety Standard commenced. The Safety Standard applied to all consumer goods containing a button battery. It relevantly provided:
 - (a) by s 8, that a button battery in a consumer good must not release during reasonably foreseeable use or misuse conditions, and that a consumer good only complied with this condition if it met the product-specific standards set out in s 12 or the non-product specific standards in s 16; and
 - (b) by s 9, that the compartment in which a button battery is held in a consumer good that is intended to be replaceable by a consumer must be designed to ensure that it is resistant to being opened by young children, and that a consumer good only complied with this condition if it met the standards set out in ss 13, 14, 15, or 17.
8. A product would only comply with one of the standards identified in ss 12 to 17 of the Safety Standard if, prior to being supplied to consumers, representative samples of those goods were tested in accordance with one of the standards identified in those sections, and those samples were compliant with the identified standard.

9. Between 17 May 2023 and 14 September 2024, Dusk, in trade or commerce, supplied the consumer goods in Schedule A to the public in the quantities listed therein. Each different type of consumer good was supplied during the dates specified for that product in Schedule A. During that same period, those consumer goods, in at least that number, were also offered for supply to the public.
10. The consumer goods listed in rows 1 to 8 of Schedule A were not tested in accordance with the requirements of ss 12 to 17 of the Safety Standard until 12 August 2024 (on which date, these products, or a representative sample thereof, passed the relevant tests).
11. The consumer goods listed in rows 9 to 11 of Schedule A were not tested in accordance with the requirements of ss 12 to 17 of the Safety Standard until 14 September 2024 (on which date, these products passed the relevant tests).
12. The consumer goods listed in rows 12 to 25 of Schedule A were not tested in accordance with the requirements of ss 12 to 17 of the Safety Standard until 9 September 2024 (on which date, these products, or a representative sample thereof, passed the relevant tests).
13. Accordingly, until those dates, when those respective products were supplied and offered for supply by Dusk, they did not comply with ss 8 or 9 of the Safety Standard.

Information Standard

14. On 22 June 2022, the Information Standard commenced. The Information Standard applied to all consumer goods containing a button battery. It relevantly provided, by ss 8 and 9, that such goods were required to contain prescribed warnings on instructions supplied with the goods or on packaging.
15. Between 24 October 2024 and 12 December 2024, Dusk, in trade or commerce, supplied the consumer goods in Schedule B to the public in the quantities listed therein. During that period, those consumer goods, in at least that number, were also offered for supply to the public.
16. The consumer goods listed in Schedule B did not contain any of the prescribed warnings on their packaging and were not accompanied by instructions that contained the prescribed warnings, such that when those products were supplied and offered for supply by Dusk, they did not comply with ss 8 or 9 of the Information Standard.

III. RELIEF SOUGHT

17. The Applicant seeks the relief set out in the Originating Application.

IV. LEGAL BASIS FOR THE RELIEF SOUGHT

18. Pursuant to s 228 of the ACL, the ACCC is empowered as the regulator to institute a proceeding in the Court for the recovery of a pecuniary penalty referred to in s 224 of the ACL. Section 224 provides that the Court may impose a pecuniary penalty on a person for a contravention of, relevantly, ss 106 and 136. Where a person contravenes a provision of Chapter 3 (in which ss 106 and 136 are located), the Court may also impose non-punitive orders under s 246 and make adverse publicity orders under s 247.
19. Section 106(1) of the ACL prohibits a person from, in trade or commerce, supplying consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and the goods supplied do not comply with the standard.
20. By reason of the facts set out in paragraphs 7 to 13 above, Dusk contravened s 106(1) on each occasion that it supplied one of the goods listed in rows 1 to 8 of Schedule A prior to 12 August 2024, rows 9 to 11 of Schedule A prior to 14 September 2024, and rows 12 to 25 of Schedule A prior to 9 September 2024.
21. Section 136(1) of the ACL prohibits a person from, in trade or commerce, supplying consumer goods of a particular kind if an information standard for consumer goods of that kind is in force and the goods supplied do not comply with the standard.
22. By reason of the facts set out in paragraphs 14 to 16 above, between 24 October 2024 and 12 December 2024, Dusk contravened s 136(1) on each occasion that it supplied one of the goods listed in Schedule B.
23. Section 106(2) of the ACL prohibits a person from, in trade or commerce, offering for supply consumer goods of a particular kind if a safety standard for consumer goods of that kind is in force and the supply of those goods is prohibited by s 106(1).
24. By reason of the facts set out in paragraphs 7 to 12 above, Dusk contravened s 106(2) by offering for supply each of the goods, in at least the quantities stated, listed in rows 1 to 8 of Schedule A prior to 12 August 2024, rows 9 to 11 of Schedule A prior to 14 September 2024, and rows 12 to 25 of Schedule A prior to 9 September 2024 (both in physical stores and its online store).
25. Section 136(2) of the ACL prohibits a person from, in trade or commerce, offering for supply consumer goods of a particular kind if an information standard for consumer goods of that kind is in force and the supply of those goods is prohibited by s 136(1).
26. By reason of the facts set out in paragraphs 14 to 16 above, between 24 October 2024 and 12 December 2024, Dusk contravened s 136(2) by offering for supply each of the

goods, in at least the quantities stated, listed in Schedule B (both in physical stores and its online store).

27. Section 87B(4) of the CCA relevantly provides that if the Court is satisfied that a person has breached a term of an undertaking accepted by the ACCC under s 87B(1), the Court may make orders directing the person to comply with that term of the undertaking, directing the payment of any financial benefit obtained that is attributable to the breach to the Commonwealth, or any other order that the Court considers appropriate.
28. By reason of the facts set out in paragraphs 4, 20, 22, 24 and 26 above, Dusk breached the terms of the Undertaking set out in paragraph 4 above on each occasion that it contravened the Button Battery Standards as alleged in paragraphs 20, 22, 24 and 26 above.

V. HARM

29. The purpose of the Safety Standard and Information Standard is to reduce the risk of death or serious injury, particularly to children, associated with button batteries. The safety risk to children from button batteries can arise where they gain access to the batteries from consumer goods that contain button batteries that either do not have secure battery compartments or which easily release the batteries and ingest or swallow a button battery. For those products that did not comply with the Safety Standard, Dusk courted the risk that these products may not have passed testing, in which case children may have been exposed to these risks of harm.
30. For those products which did not comply with the Information Standard, parents and caregivers were not alerted to the button battery hazard prior to purchase or use of the products and therefore less likely to take steps to safeguard against the risks that may be presented. By engaging in the conduct, Dusk increased the risk that children may have been exposed to the risk of ingestion or insertion of button batteries in these products.

Date: 21 July 2026



Signed by John Fogarty
DLA Piper Australia
Lawyer for the Applicant

This Concise Statement was settled by NJ Derrington of Counsel.

Certificate of lawyer

I, John Fogarty, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 21 July 2026

A handwritten signature in black ink, appearing to read 'Jwf', is positioned above a horizontal line.

Signed by John Fogarty
DLA Piper Australia
Lawyer for the Applicant

Schedule A

#	Product	Non-Compliant Units Sold	First Date Offered & Supplied	Date Contravention Ceased
1.	Mylee White MoodMist Diffuser with Remote (Green Delta Limited)	197	24 June 2024	12 August 2024
2.	Delphine Pink MoodMist Diffuser with Remote (Green Delta Limited)	1	10 August 2024	12 August 2024
3.	Natalia Black MoodMist Diffuser with Remote (Green Delta Limited)	2,906	15 January 2024	12 August 2024
4.	Natalia White Glass MoodMist Diffuser (Green Delta Limited)	1,699	18 March 2024	12 August 2024
5.	Bridgit Oakley MoodMist Diffuser (Green Delta Limited)	2,966	30 November 2023	12 August 2024
6.	Chevron White Glass MoodMist Diffuser (Green Delta Limited)	1,489	11 April 2024	12 August 2024
7.	Dorothy Pink Glass MoodMist Diffuser (Green Delta Limited)	2,493	13 March 2024	12 August 2024
8.	Amalie Pearl MoodMist Diffuser (Green Delta Limited)	2,423	17 May 2023	12 August 2024
9.	Atilia LED Teardrop Angel (Xian Metals and Minerals I&E)	4,515	17 October 2023	14 September 2024
10.	Eloa LED Teardrop Angel (Xian Metals and Minerals I&E)	4,095	17 October 2023	14 September 2024
11.	Astria LED Teardrop Angel (Xian Metals and Minerals I&E)	4,477	18 October 2023	14 September 2024
12.	Sweet Snowman LED (Fujian Profit Group)	182	20 October 2023	9 September 2024

#	Product	Non-Compliant Units Sold	First Date Offered & Supplied	Date Contravention Ceased
13.	Hocus Pocus Pumpkin LED (Fujian Profit Group)	1,700	5 September 2023	9 September 2024
14.	Angel of Hearts LED (Fujian Profit Group)	3,464	5 October 2023	9 September 2024
15.	Home is where Christmas is LED (Fujian Profit Group)	1,981	14 October 2023	9 September 2024
16.	Starry Santa LED (Fujian Profit Group)	2,899	20 October 2023	9 September 2024
17.	Golden Nose Reindeer LED (Fujian Profit Group)	2,419	21 October 2023	9 September 2024
18.	Bonny Bunny LED (Fujian Profit Group)	1,322	23 February 2024	9 September 2024
19.	Rudolph Reindeer LED (Fujian Profit Group)	3,050	26 October 2023	9 September 2024
20.	Topper the Penguin LED (Fujian Profit Group)	2,659	26 October 2023	9 September 2024
21.	Tall Starry Santa LED (Fujian Profit Group)	1,958	26 October 2023	9 September 2024
22.	Bunny Meadow Egg LED (Fujian Profit Group)	1,618	28 February 2024	9 September 2024
23.	Ambrose & Pepo Pumpkin LED (Fujian Profit Group)	1,202	5 September 2023	9 September 2024
24.	Stack O'Lantern LED (Fujian Profit Group)	991	6 September 2023	9 September 2024
25.	Gasper the Ghost LED (Fujian Profit Group)	1,929	31 August 2023	9 September 2024
	Total	54,635		

Schedule B

Product	Non-Compliant Units Sold	First Date Offered and Supplied	Date Contravention Ceased
Flower Market Candle & LED Glitter - Christmas Market (M&SENSE (Suzhou) Arts & Crafts Co Ltd)	3,196	24 October 2024	12 December 2024
Fresh Evergreen Candle & LED Glitter - Christmas Market (M&SENSE (Suzhou) Arts & Crafts Co Ltd)	2,980	24 October 2024	12 December 2024
Fruit Market Candle & LED Glitter - Christmas Market (M&SENSE (Suzhou) Arts & Crafts Co Ltd)	2,843	24 October 2024	12 December 2024
Sweet Shop Candle & LED Glitter - Christmas Market (M&SENSE (Suzhou) Arts & Crafts Co Ltd)	2,809	24 October 2024	12 December 2024
Total	11,828		