

PART 8 OF THE ENTERPRISE ACT 2002 ('EA02')

UNDERTAKINGS TO THE COMPETITION AND MARKETS AUTHORITY ('CMA') UNDER SECTION 219 OF THE EA02

Simba Sleep Limited, a company incorporated in England and Wales (registration number 09703422 and registered address 5th Floor Halo, Counterslip, Bristol, United Kingdom, BS1 6AJ) (**'Simba'**) voluntarily gives the following undertakings to the CMA under section 219 of the EA02 (these **'Undertakings'**).

These Undertakings represent promises by Simba in relation to consumers in the UK, which Simba undertakes to comply with in good faith.

For the avoidance of doubt, these Undertakings do not amount to an admission that any person has infringed the law.

UNDERTAKINGS

In accordance with section 219(4) of the EA02, Simba undertakes to the CMA:

- a) not to continue or repeat any conduct that the CMA believes constitutes an infringement, by complying with the requirements set out at paragraphs 1–17 below;
- b) not to engage in such conduct in the course of its business or another business;
- c) not to consent or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA02);
- d) to comply with the requirements of paragraphs 17 and 18–20 below; and
- e) to procure that any further entities that may from time-to-time form part of the Simba corporate group, and to the extent that such entities are involved with the promotion, sale and/or supply of products to consumers in the UK under the 'Simba' brand, comply with these Undertakings.

The requirements in these Undertakings take effect on the date of these Undertakings, unless otherwise specified.

Interpretation

'Black Friday Sale' means any promotion that starts before the Friday directly after Thanksgiving and runs on an uninterrupted basis for a period of time that includes that date.

'Boxing Day Sale' means any promotion that starts before 26 December and runs on an uninterrupted basis for a period of time that includes that date.

'Bundle' means a product bundle in which two or more specific Products are made available to consumers by Simba at a combined price. For the avoidance of doubt, any variation in number or combination of Products which make up a product bundle will constitute a separate Bundle.

'Bundle Was Process 1' means the reference price establishment process set out in paragraphs 4 and 5.

'Bundle Was Process 2' means the reference price establishment process set out in paragraphs 6 and 7.

'Collective Discounts' means any offer, incentive or other marketing tool which, when used or redeemed by a consumer against a Product or Bundle, reduces the current selling price, provided such consumer is part of a Consumer Group, as externally verified by a third party, at the time of purchase.

'Consumer Group' means:

- (a) healthcare sector workers;
- (b) education sector workers;
- (c) emergency service sector workers;
- (d) border and immigration workers;
- (e) military personnel;
- (f) charitable or community workers;
- (g) students and young people;
- (h) carers.

'Countdown Clock' means any form of countdown clock, countdown timer or countdown mechanism (whether by time or date) used as part of a sales promotion.

'Clear' and **'Clearly'** means information must be:

- (a) clear;
- (b) in plain language;
- (c) easily understandable;
- (d) accurate;
- (e) free from visual design elements which convey an unwarranted sense of

urgency (eg flashing text); and

(f) not misleading, either by action or omission or both.

‘Day’ means a calendar day which shall start at 00:00 and end at 23:59 UK time.

‘Discount’ means any offer, incentive or other marketing tool which, when used or redeemed by a consumer against a Product or Bundle, reduces the current selling price for that consumer, but excludes all Collective Discounts. This includes, but is not limited to, discount codes, promotional codes, vouchers, coupons, tokens, points, private sales, loyalty points, rewards systems and any other similar tools.

‘External RP’ means a price charged by another trader for a product or bundle that Simba uses in a misleading way as a comparison price against the current selling price of an identical or similar Product or Bundle (as applicable).

‘Future RP’ means a price that Simba intends to charge for a Product or Bundle in future and which is used as a comparison price against the current selling price of the relevant Product or Bundle, but excludes Introductory RPs.

‘Future Price Process’ means the Reference Price Establishment Process set out in paragraph 8.

‘Guidance’ means the CMA ‘Urgency claims and price reduction claims: compliance advice for online businesses’ guidance as amended from time to time.

‘Headline Discount Claim’ means any price reduction claim, where an individual Product or Bundle is not specified in the claim.

‘Individual Discount Claim’ means any price reduction claim that relates to a specific Product and/or Bundle.

‘Introductory RP’ means, in respect of a new Product launch, the price that Simba may charge for that Product in future, and that is used as a comparison price against the current selling price of the relevant Product.

‘Marketing Claim’ means a claim made by Simba in the course of promoting, selling or supplying a Product(s) and/or Bundle(s) that consists of:

(a) a phrase, symbol or other graphic that indicates, or otherwise implies, the Product or Bundle is popular, is in demand, that stock is likely to sell out or that there is otherwise a need for the consumer to act quickly to purchase the relevant Product or Bundle; or

(b) a metric that measures and indicates pre-purchase consumer activity, such as number of page views, number of items held in baskets or similar.

For the avoidance of doubt, this includes any claim that indicates, or otherwise implies, that a sales promotion is time-limited but excludes Countdown Clocks.

‘Membership Benefits’ means gifts, newsletters, enhanced service, early access to products, or other benefits where in each case they do not relate to the price of a Product or Bundle at the point of sale.

‘Online Platform’ means any transactional or non-transactional online platform, website, virtual store, social network, social media channel, marketplace, web-shop or application, directed towards consumers in the UK.

‘Online Selling Channel’ means:

- (a) any Online Platform operated by Simba; and
- (b) any Online Platform that is operated by a third party through which Simba promotes, sells and/or supplies its Products and/or Bundles, provided that Simba has control (including partial, direct or indirect control) of the promotion of, or the pricing and discounting of, Products and/or Bundles promoted, supplied or sold via such Online Platform.

‘Product’ means each specific product (including Refurbished Products) made available to consumers by Simba. For the avoidance of doubt, all variations of a product type, (whether by design, size, colour, additional component, add-on or other product characteristic, including name) will constitute a separate Product.

‘Product Was Process’ means the Reference Price Establishment Process set out in paragraphs 2 and 3.

‘Prominent’ and **‘Prominently’** means information must be presented so that it is:

- (a) noticeable to consumers;
- (b) in respect of written communications, in a font, size, colour and position that enables the consumer easily to identify, read, and understand the information;
- (c) in respect of oral communications, delivered at a speed and in a manner that enables the consumer easily to understand the information; and
- (d) does not require the consumer to take any action to access the information (for example following a hyperlink or QR code or accessing information that is only revealed when consumers take action such as accessing text that is otherwise not displayed on the face of the screen (such as via a hover icon) or navigating to a particular area, including by scrolling to a different part of the display in the online context.

‘Reference Price(s)’ means a price against which the current selling price of a Product or Bundle is directly or implicitly compared. This includes but is not limited to the following reference prices:

- (a) a Was RP;
- (b) an Introductory RP;

- (c) an External RP;
- (d) a Refurbished RP;
- (e) a Future RP;
- (f) a recommended retail price;
- (g) any struck-out price presented with or in relation to a comparison price;
- (h) any percentage discount indication; and
- (i) the price before a Discount is applied.

'Reference Price Establishment Process' means the:

- (a) Product Was Process;
- (b) Bundle Was Process 1;
- (c) Bundle Was Process 2;
- (d) Future Price Process; and
- (e) Refurbished Price Process.

'Refurbished Price Process' means the Reference Price Establishment Process set out in paragraph 10.

'Refurbished Product' means a Product which has been:

- (a) made available to consumers by Simba;
- (b) purchased by a consumer;
- (c) returned to Simba by the consumer; and
- (d) refurbished by Simba for the purposes of resale to consumers.

'Refurbished RP' means a Product price that Simba uses as a comparison price against the current selling price of a Refurbished Product.

'Simba Website' means <https://simbasleep.com> and any other Online Platform operated by or under the control of any member of Simba directed towards consumers in the UK.

'Spreadsheets' means the Excel spreadsheets that follow the format of the template spreadsheets set out in Annex A to these Undertakings.

'Was RP' means a price that Simba has, or in any way implies it has, previously charged for a Product or Bundle that Simba uses as a comparison price against the current selling price of the relevant Product or Bundle.

Reference Prices and Discounts

1. Simba shall not:

- (a) use, promote or otherwise display any Reference Price; or
- (b) offer any Discounts, on any Online Selling Channel, or in any other way,

unless Simba complies in full with the terms of a Reference Price Establishment Process.

For the avoidance of doubt, these Undertakings do not prevent Simba from adjusting or otherwise reducing the price at which it offers its Products and Bundles when not using a Reference Price or Discount offer.

Product Was Process

2. Simba may promote a Product using a Was RP, or permit a Discount to be applied to that Product, in accordance with paragraph 3, provided the following conditions are all satisfied:

- (a) the relevant Product (**'Product A'**) has been available to purchase for at least 28 or more continuous Days (**'Period A'**) at or above a particular price during Period A (**'Price A'**) via a particular Online Selling Channel (**'Channel A'**);
- (b) Simba has sold one or more units of Product A via Channel A at or above Price A during Period A, which shall exclude all transactions where Discounts have been applied (the total number of units sold at the end of Period A being the **'Product A Sales Figure'**); and
- (c) the use of the relevant Was RP in relation to Product A is not otherwise misleading.

3. Immediately following the end of Period A, Simba may promote, on any channel, sales of Product A on Channel A using Price A as a Was RP or permit Discounts to be applied to Product A until the earlier of the following:

- (a) Simba has sold a number of units of Product A that is equivalent to double the Product A Sales Figure; or
- (b) the time period equal to Period A has expired.

Thereafter, Simba shall not use, promote or otherwise display any Reference Price in connection with Product A, nor shall it permit a Discount to be applied to Product A, unless Simba complies in full with the terms of another Reference Price Establishment Process.

Bundle Was Process 1

4. Simba may promote a Bundle using a Was RP in accordance with paragraph 5, provided the following conditions are all satisfied:
 - (a) the relevant Bundle (**'Bundle B'**) has been available to purchase for at least 28 or more continuous Days (**'Period B'**) at or above a particular price during Period B (**'Price B'**) via a particular Online Selling Channel (**'Channel B'**);
 - (b) Simba has sold one or more units of Bundle B via Channel B at or above Price B during Period B, which shall exclude all transactions where Discounts have been applied (the total number of units sold at the end of Period B being the **'Bundle B Sales Figure'**); and
 - (c) the use of the relevant Was RP in relation to Bundle B is not otherwise misleading.
5. Immediately following the end of Period B, Simba may promote, on any channel, sales of Bundle B on Channel B using Price B as a Was RP, or permit Discounts to be applied to Bundle B until the earlier of the following:
 - (a) Simba has sold a number of units of Bundle B that is equivalent to double the Bundle B Sales Figure; or
 - (b) the time period equal to Period B has expired.

Thereafter, Simba shall not use, promote or otherwise display any Reference Price in connection with Bundle B, nor shall it permit a Discount to be applied to Bundle B, unless Simba complies in full with the terms of another Reference Price Establishment Process.

Bundle Was Process 2

6. Simba may promote a Bundle using a Was RP in accordance with paragraph 7 provided the following conditions are all satisfied:
 - (a) each Product that forms part of the relevant Bundle (each Product being a **'Product Component'** and the Bundle being **'Bundle C'**) has been available for purchase for at least 28 or more continuous Days (**'Period C'**) at or above a particular price (the lowest price of each Product Component being a **'Component Price'** and the combined Component Price of all Product Components in Bundle C being **'Price C'**), via a particular Online Selling Channel (**'Channel C'**);

- (b) Simba has sold one or more units of each Product Component via Channel C at or above the relevant Component Price, which shall exclude all transactions where Discounts have been applied; and
 - (c) the use of the relevant Was RP in relation to Bundle C is not otherwise misleading.
7. Immediately following the end of Period C, Simba may promote, on any channel, sales of Bundle C on Channel C using Price C as a Was RP, or permit Discounts to be applied to Bundle C until the earlier of the following;
- (a) Simba has sold a number of units of Bundle C that is equivalent to double the number of units of the Product included in Bundle C that sold the fewest number of units in Period C (compared to the other Products included in Bundle C); or
 - (b) the time period equal to Period C has expired.

Thereafter, Simba shall not use, promote or otherwise display any Reference Price in connection with Bundle C, nor shall it permit a Discount to be applied to Bundle C, unless Simba complies in full with the terms of another Reference Price Establishment Process.

8. In relation to a Black Friday Sale or a Boxing Day Sale, the reference in paragraphs 2, 4 and 6 above to '28 or more continuous days' is substituted with '21 or more continuous days'.

Future Price Process

9. Simba may promote a Product or Bundle using a Future RP or a Product using an Introductory RP provided:
- (a) Simba Clearly and Prominently states the date from which the price change will take effect;
 - (b) Simba changes the price of the Product or Bundle (as applicable) to the relevant Future RP or Introductory RP on that date;
 - (c) Simba continues to charge at least the amount of the Future RP or Introductory RP as the selling price (with no Discount or other reduction) for the longer of either the following 30 consecutive Days, or the point in time at which Simba has sold half the number of units of the Product or Bundle sold when it was advertised with the Future RP or Introductory RP;
 - (d) where the promotion is a Future RP, Simba has not included that Product or Bundle as part of any other promotion or Discount in the previous 12 calendar months prior to the launch date of the Future RP promotion; and

- (e) the use of the relevant Future RP or Introductory RP in relation to the relevant Product or Bundle is not otherwise misleading.

Refurbished Price Process

10. Simba may promote a Refurbished Product using a Refurbished RP provided the following conditions are all satisfied:

- (a) the Refurbished RP shall relate to the same Product type as the Refurbished Product (the '**Non-Refurbished Product**');
- (b) the Refurbished RP shall be the lowest non-Bundle price at which the Non-Refurbished Product was sold at in the previous 6 calendar months prior to the launch date of the promotion using the Refurbished RP; and
- (c) the use of the relevant Refurbished RP in relation to the relevant Refurbished Product is not otherwise misleading.

Headline Discount Claims and Individual Discount Claims

11. Simba shall not promote a Headline Discount Claim or Individual Discount Claim unless Simba has complied with a Reference Price Establishment Process which is the basis for the relevant Headline Discount Claim or Individual Discount Claim (as applicable).

Countdown Clocks

12. Simba shall ensure that any Countdown Clocks used on any Online Selling Channels:

- (a) do not, whether explicitly or implicitly, give consumers a false impression that they must act quickly to avoid missing out;
- (b) do not, whether explicitly or implicitly give the impression that when the Countdown Clock concludes the Product or Bundle will revert to the Reference Price if in fact that is not true; and
- (c) are not otherwise misleading.

13. In particular, Simba shall ensure that any Countdown Clocks:

- (a) are Clear;
- (b) specify Prominently which sales promotion(s) and Product(s) or Bundle(s) the Countdown Clock applies to;

- (c) are displayed only on pages that are directly relevant to the sales promotion(s) and Product(s) or Bundle(s) to which the Countdown Clock applies;
- (d) state Prominently which characteristics of the sales promotion(s) and Product(s) or Bundles will change when the Countdown Clock concludes;
- (e) conclude at the same time as the sales promotion(s) to which the Countdown Clock applies;
- (f) are not used where the relevant Product(s) or Bundle(s) are offered on any sales promotion within 30 consecutive days after the date on which the Countdown Clock concludes; and
- (g) are not used where any substantially interchangeable substitute of the relevant Product(s) or Bundle(s) is offered on sales promotion within 30 consecutive days after the date on which the Countdown Clock concludes.

Marketing Claims

14. Simba shall ensure that any Marketing Claims used on any Online Selling Channels:

- (a) do not, whether explicitly or implicitly, give consumers a false impression that they must act quickly to avoid missing out; and
- (b) are not otherwise misleading.

15. In particular, Simba shall ensure that any Marketing Claims:

- (a) are Clear; and
- (b) disclose Prominently any conditions, assumptions, limitations, and qualifications that are relevant to the Marketing Claim.

16. Simba shall also ensure that any Marketing Claim that indicates or otherwise implies that a sales promotion is time limited is not used where any substantially interchangeable substitute of the relevant Product(s) or Bundle(s) is offered on sales promotion within 30 consecutive days after the date on which time-limited offer concludes, unless it is Clearly and Prominently specified which substitute Product(s) or Bundle(s) will go on sales promotion immediately or within the aforementioned 30 day period.

The Guidance

17. Simba shall comply with the Guidance.

Reporting and compliance

18. Nothing in these Undertakings shall prevent Simba from offering Membership Benefits.
19. Simba shall independently monitor and record its own compliance with these Undertakings, which must include appropriate training for staff. The CMA may, upon reasonable notice, request such records at any time.
20. If Simba suspects that it may not be in compliance with these Undertakings, it shall take all necessary steps to assess whether it is in compliance and bring itself into compliance within 5 Days.
21. Simba believes itself to be in compliance as at the date of these Undertakings, but shall have until 9 September 2024 to ensure its internal compliance processes are in place, and fully operational.

BY SIGNING THESE UNDERTAKINGS, SIMBA IS AGREEING TO THE TERMS OF THESE UNDERTAKINGS.

IF HAVING SIGNED THIS DOCUMENT SIMBA BREACHES ANY PART OF THESE UNDERTAKINGS, IT IS AWARE THAT IT MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.

THE CMA WILL CONSIDER VARYING OR TERMINATING THESE UNDERTAKINGS, EITHER UPON REQUEST FROM SIMBA OR UNDER THE CMA'S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THESE UNDERTAKINGS ARE NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES THEY WERE DESIGNED TO REMEDY (FOR EXAMPLE, THESE UNDERTAKINGS ARE AFFECTED BY NEW LEGISLATION OR CHANGES IN MARKET CONDITIONS).

