

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

EasyMeals By Flavour Makers Pty Ltd

ACN 127 890 144

Person giving the Undertaking

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by EasyMeals By Flavour Makers Pty Ltd (ACN 127 890 144) (**EasyMeals**) of 43 Station Road, CHELTENHAM VIC 3192 for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (**the Act**).

Background

- 2 EasyMeals is a company that was incorporated in Victoria under the *Corporations Act 2001* (Cth) in October 2007 and is a corporation within the meaning of section 4 of the Act.
- 3 EasyMeals has carried on business, in trade or commerce, by supplying customers with "pre-packaged, shelf stable meals". EasyMeals promotes its products through the website www.easymeals.net.au (**the Website**) and by telemarketing. It purchases consumer contact details from third party marketing companies who use online surveys to gather those details. In five years of operation, EasyMeals has serviced approximately 120,000 customers and has 10,000 active customers.

Conduct of Concern

- 4 On 29 January 2015, the ACCC received a complaint on behalf of a newly arrived migrant who had been contacted, via telemarketing, by EasyMeals. EasyMeals sold the consumer a meal plan that EasyMeals represented would be suitable for his special diabetic dietary needs, when this was not the case.
- 5 On investigating this complaint, the ACCC became aware of the conduct of concern set out at paragraphs 6 to 8 below.
- 6 From October 2014 to July 2015, during telephone calls to consumers, EasyMeals made false or misleading representations about the uses or benefits of the meals it supplies – namely that the meals are suitable for all diabetics, when, in fact, the suitability of the meals for diabetics depends upon the individual diabetic, their diet and the severity of their condition.
- 7 From July 2015 to March 2016, EasyMeals caused false or misleading representations to be made on the Website and third party websites that consumers could obtain a free EasyMeals meal by providing their contact details or entering a competition, when the consumer could only obtain a free EasyMeals meal if they purchased a meal from EasyMeals first.
- 8 From October 2014 to March 2016, EasyMeals contacted consumers, who had previously provided their details to third party marketing companies for the purpose of obtaining a free meal from EasyMeals, by telephone for the purpose of negotiating the sale of EasyMeals meals to the consumer. On each occasion that EasyMeals negotiated the sale of EasyMeals meals to a consumer in this manner, EasyMeals entered into an unsolicited consumer agreement, and when doing so, failed to include in an agreement document:
 - 8.1 all the terms of the agreement;

- 8.2 a notice on the front page of the agreement document that conspicuously and prominently informed the consumer of their right to terminate the agreement; and
- 8.3 an accompanying notice that may be used by the consumer to terminate the agreement.
- 9 Following the ACCC's intervention, EasyMeals:
 - 9.1 refunded to the consumer referred to in paragraph 4, the monies deducted from his account in payment for the EasyMeals meal plan;
 - 9.2 undertook an internal investigation aimed at implementing corrective measures;
 - 9.3 cooperated with the ACCC's investigation into its practices;
 - 9.4 agreed to rectify its practices to ensure future compliance; and
 - 9.5 offered this Undertaking to the ACCC.

Relevant Provisions

- 10 The Australian Consumer Law (**ACL**) is contained in Schedule 2 to the Act.
- 11 Section 29(1) of the ACL prohibits a corporation, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services from making a false or misleading representation:
 - 11.1 that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits (section 29(1)(g)); and
 - 11.2 with respect to the price of goods or services (section 29(1)(i)).
- 12 Section 69 of the ACL provides a definition of an unsolicited consumer agreement.
- 13 Section 79 of the ACL requires that a supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with certain requirements, including:
 - (a) it must set out in full all the terms of the agreement;
 - (b) its front page must include a notice that conspicuously and prominently informs the consumer of the consumer's right to terminate the agreement; and
 - (c) it must be accompanied by a notice that may be used by the consumer to terminate the agreement.

Contraventions

- 14 The ACCC considers, and EasyMeals admits, that the conduct described at paragraphs 6 to 8 is likely to have contravened sections 29(1)(g), 29(1)(i) and 79 of the ACL, respectively.

Commencement of this Undertaking

- 15 This Undertaking comes into effect when:
 - 15.1 the Undertaking is executed by EasyMeals; and
 - 15.2 the Undertaking so executed is accepted by the ACCC (**the Commencement Date**).
- 16 From the Commencement Date, EasyMeals undertakes to assume the obligations set out in paragraphs 17 to 20, inclusive, below.

Undertakings

Corrective component

- 17 EasyMeals undertakes, for a period of three (3) years from the Commencement Date, that it will not, in trade or commerce, whether by itself, its directors, officers or agents, in connection with the supply of goods, make a representation to a consumer to the effect that:
 - 17.1 EasyMeals' products are suitable for all diabetics; or
 - 17.2 consumers can obtain a free EasyMeals meal by providing EasyMeals, or its nominated third party, with their contact details or by entering a competition specified by EasyMeals, or its nominated third party, when this is not the case.
- 18 EasyMeals undertakes, for a period of three (3) years from the Commencement Date, that whenever it enters into an unsolicited consumer agreement, it will provide each consumer with an agreement document which complies with the requirements of the ACL.
- 19 EasyMeals undertakes, that within ten (10) days of the Commencement Date, it will publish or cause to be published, a corrective notice in the form and terms outlined in **Annexure A**, on the Website (**Website Notice**) and take all reasonable steps to ensure that the Website Notice:
 - 19.1 is located at the URL "easymeals.net.au/corrective-notice"
 - 19.2 is accessible by a prominent one-click link displayed in the top third of the homepage of the Website entitled "CORRECTIVE NOTICE - BREACHES OF THE AUSTRALIAN CONSUMER LAW", which satisfies the following specifications, as outlined in **Annexure B**:
 - 19.2.1 the words "CORRECTIVE NOTICE - BREACHES OF THE AUSTRALIAN CONSUMER LAW" are to be in uppercase, 18 point, bold, black, Arial font on a white background, centred and in a black bordered box;
 - 19.2.2 the words "Click here for further information" are to be in 14 point, black, Arial font on a white background and centred below the words "CORRECTIVE NOTICE - BREACHES OF THE AUSTRALIAN CONSUMER LAW" in the same bordered box; and
 - 19.2.3 the bordered box is to be at least 255 pixels wide by 60 pixels high, and its contents, including white space, is to operate in the form of a one-click hyperlink to the Website Notice;
 - 19.3 is the same as the notice in **Annexure A**, including font and formatting, and:
 - 19.3.1 has a headline font of no less than 12 point, bold, black Arial font on a white background;
 - 19.3.2 is of at least 540 pixels wide by 500 pixels high;
 - 19.3.3 has a black border that is 3 pixels wide;
 - 19.3.4 the EasyMeals logo is in colour, centred, and at least 32 pixels high;
 - 19.3.5 the ACCC logo and Commonwealth crest are the same scale and colour (PMS 268) and at least 32 pixels high per the digital image provided by the ACCC to EasyMeals for inclusion in the Website Notice;
 - 19.3.6 is displayed on a stand-alone webpage that is coded in standard "HTML" format; and
 - 19.3.7 is not displayed as a "pop-up" or "pop-under" window.

19.4 shall remain on the Website for a period of 60 continuous days from the date it is first accessible on the Website.

Compliance Program

20 EasyMeals undertakes for the purpose of section 87B of the Act, for a period of two (2) years from the Commencement Date, that it will:

20.1 establish, implement and maintain a Competition and Consumer Law Compliance Program (**the Compliance Program**) in accordance with the requirements set out in **Annexure C**, being a program designed to minimise EasyMeals' risk of future contraventions of the Act and to ensure its awareness of its responsibilities and obligations in relation to the ACL; and

20.2 provide, at its own expense, copies of all documents required by the ACCC in accordance with **Annexure C**.

Acknowledgments

21 EasyMeals acknowledges that:

21.1 the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B Undertakings on its website;

21.2 the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;

21.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

21.4 a summary of the ACCC Compliance Program Review Reports referred to in **Annexure C** of this Undertaking may be held with this Undertaking in the public register.

Executed by

EasyMeals By Flavour Makers Pty Ltd (ACN 127 890 144) pursuant to section 127(1) of the *Corporations Act 2001*.


.....
Secretary/Director


.....
Print name

.....
Director

.....
Print name

This 21 day of August 2016

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE COMPETITION AND CONSUMER ACT 2010

Rodney Graham Sims
Chairman

A handwritten signature in black ink, appearing to read 'RGSims', written over a horizontal line.

This 16th day of August 2016

ANNEXURE A

CORRECTIVE NOTICE

FALSE OR MISLEADING REPRESENTATIONS MADE BY EASYMEALS

[Insert EASYMEALS logo here and delete the text inside the square brackets]

EasyMeals sells pre-packaged, shelf stable meals to its customers through telemarketing and its website. EasyMeals gathers consumer contact details through third party online surveys which often operate through 'pop-up windows'. EasyMeals then contacts these consumers for the purpose of selling them EasyMeals products.

The ACCC has alerted EasyMeals to concerns about its conduct, including that:

- EasyMeals represented to consumers that EasyMeals' meals were suitable for all diabetics when this was not the case;
- EasyMeals represented to consumers they could get a free meal just for providing their contact information, when this was not the case; and
- EasyMeals entered into unsolicited consumer agreements, by telemarketing, and did not provide to consumers documents required by the Australian Consumer Law.

EasyMeals admits that, by engaging in this conduct, it has contravened sections 29(1)(g), 29(1)(i) and 79 of the Australian Consumer Law respectively.

To address these concerns, EasyMeals has cooperated with the ACCC, and initiated an independent review of its practices. EasyMeals has also provided a court enforceable undertaking to the ACCC, pursuant to section 87B of the *Competition and Consumer Act 2010*, to minimise the risk of similar conduct happening again.

If you believe you have been affected by the conduct outlined above, please contact EasyMeals on 1800 017 560.



Australian
Competition &
Consumer
Commission

ANNEXURE B

**CORRECTIVE NOTICE - BREACHES OF THE
AUSTRALIAN CONSUMER LAW**

[Click here for further information](#)

ANNEXURE C

COMPETITION AND CONSUMER LAW COMPLIANCE PROGRAM

LEVEL 2

EasyMeals will establish a Compliance Program that complies with each of the following requirements:

Appointments

1. Within one (1) month of the Commencement Date, EasyMeals **will** appoint a director or a senior manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

Compliance Officer Training

2. Within one (1) month of the Commencement Date, EasyMeals will ensure that the Compliance Officer attends practical training on the ACL, with a focus on Part 3-1, Division 1 – “False or misleading representations etc.” and Part 3-2, Division 2 – “Unsolicited consumer agreements” (**the Relevant Provisions**).
3. EasyMeals will ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.
4. Within fourteen (14) days of completion of the training, EasyMeals will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the completion of the training conducted in accordance with paragraphs 2 and 3, above.

Staff Training

5. Within four (4) months of the Commencement Date, EasyMeals will cause all of its employees, agents and contractors, including call centre staff, whose duties could result in them being concerned with conduct that may contravene any section(s) within the Relevant Provisions to attend practical training administered by the Compliance Officer or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on the Relevant Provisions.
6. EasyMeals will ensure that within one (1) month of it appointing an employee or engaging an agent or contractor (the Appointee), whose duties could result in the Appointee being concerned with conduct that may contravene any section(s) within the Relevant Provisions, and prior to the Appointee engaging with any consumer, the Appointee attend practical training administered by the Compliance Officer or a qualified compliance professional or legal practitioner with expertise in competition and consumer law, that focuses on the Relevant Provisions.
7. EasyMeals will ensure that all of its employees, agents and contractors, including call centre staff, continue to receive training as outlined in paragraphs 5 and 6 above, regularly (at least once a year).

Complaints handling

8. Within two (2) months of the Commencement Date, EasyMeals will cause the Compliance Officer to review EasyMeals’ complaint handling procedures and make any

revisions the Compliance Officer considers necessary to ensure that complaints are comprehensively recorded and acted on.

9. Within two (2) months and fourteen (14) days of the Commencement Date, EasyMeals will provide the ACCC with an outline of its complaint handling procedures, including any revisions made by the Compliance Officer under paragraph 8.

Reports to Governing Body

10. EasyMeals will ensure that the Compliance Officer reports to the EasyMeals governing body¹ (**the Governing Body**) every six (6) months on the continuing effectiveness of the Compliance Program.

Compliance Review

11. EasyMeals will, at its own expense, cause an annual review of the Compliance Program (**Review**) to be carried out in accordance with each of the following requirements:
 - 11.1. **Scope of Review** – the Review should be broad and rigorous enough to provide EasyMeals and the ACCC with:
 - 11.1.1. verification that EasyMeals has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of EasyMeals; and
 - 11.1.2. the Compliance Program Review Reports detailed at paragraph 12 below.
 - 11.2. **Independent Reviewer** – EasyMeals will ensure that each Review is carried out by a suitably qualified, independent compliance professional or legal practitioner with expertise in competition and consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 11.2.1. did not design or implement the Compliance Program;
 - 11.2.2. is not a present or past staff member or office holder of EasyMeals;
 - 11.2.3. has not acted and does not act for, and does not consult and has not consulted to, EasyMeals in any competition or consumer law related matters, other than performing Reviews under this Undertaking; and
 - 11.2.4. has no significant shareholding or other interests in EasyMeals.
 - 11.3. **Evidence** - EasyMeals will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in EasyMeals' possession or control, including without limitation:
 - 11.3.1. the ability to make enquiries of any of EasyMeals' office holders, employees, contractors, representatives, or agents;
 - 11.3.2. documents relating to the Compliance Program, including documents relevant to the Complaints Handling System, and staff training; and

¹ Governing Body means the group of people comprising all officeholders of EasyMeals By Flavour Makers Pty Ltd, including all directors, senior managers, and the company secretary.

11.3.3. any reports made by the Compliance Officer to the Governing Body regarding EasyMeals' Compliance Program.

11.4. EasyMeals will ensure that a Review is completed one (1) year after the Commencement Date and that a subsequent Review is completed one (1) year after the completion of the initial Review.

Compliance Program Review Reports

12. EasyMeals will use its best endeavours to ensure that within fourteen (14) days of the completion of the Review, the Reviewer includes the following findings of the Review in a Compliance Program Review Report (**the Compliance Program Review Report**) to the Compliance Officer:

12.1. whether the Compliance Program includes all the elements detailed in paragraphs 1 to 9 above, and if not, what elements need to be included or further developed;

12.2. the Reviewer's opinion on whether EasyMeals has in place effective staff training and complaints handling procedures that will minimise EasyMeals' risk of future contraventions of the ACL and ensure its awareness of its responsibilities and obligations in relation to the ACL and if not, what aspects need to be further developed; and

12.3. whether there are any material deficiencies in the Compliance Program, or whether there are, or have been, instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure(s)².

EasyMeals Response to Compliance Program Review Reports

13. EasyMeals will ensure that the Compliance Officer, within ten (10) days of receiving the Compliance Program Review Report:

13.1. provides the Compliance Program Review Report to the Governing Body of EasyMeals; and

13.2. where a Material Failure has been identified by the Reviewer in the Compliance Program Review Report, provide an addendum report to EasyMeals' Governing Body identifying how EasyMeals can implement any recommendations to rectify the Material Failure.

14. EasyMeals will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Program Review Report to address a Material Failure.

² Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- Incorporate a requirement of the Undertaking in the design of the Compliance Program, for example if a Complaints Handling System did not provide any mechanism for responding to complaints; or
- Comply with a fundamental obligation in the implementation of the Compliance Program, for example, if no staff training has been conducted within the annual review period

Reporting to the ACCC

15. Within ten (10) days of EasyMeals' Governing Body receiving the Compliance Program Review Report, EasyMeals will provide a copy of the Compliance Program Review Report to the ACCC.
16. Where a Material Failure has been identified by the Reviewer, at the time of EasyMeals providing a copy of the Compliance Program Review Report to the ACCC, EasyMeals will:
 - 16.1. provide the ACCC with the addendum report at paragraph 13.2; and
 - 16.2. inform the ACCC of any steps that it has taken to implement the recommendations made by the Reviewer in the Compliance Program Review Report; or
 - 16.3. outline the steps, including anticipated timeframe, that EasyMeals proposes to take to implement the recommendations made by the Reviewer in the Compliance Program Review Report, and will then inform the ACCC once those steps have been taken.

Provision of Compliance Program documents to the ACCC

17. EasyMeals will maintain a record of and store all documents relating to and constituting the Compliance Program for a period of no less than three (3) years from the Commencement Date.
18. If requested by the ACCC during the three (3) year period, referred to at paragraph 17, above, EasyMeals will, at its own expense, cause to be produced and provided to the ACCC, copies of any documents relating to the Compliance Program.

ACCC Recommendations

19. EasyMeals will implement promptly and with due diligence any recommendations that the ACCC may make and that the ACCC deems reasonably necessary to ensure that EasyMeals maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.