

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

GIVEN BY

**JOHNSON & JOHNSON PACIFIC PTY LTD (ACN 001 121 446)
of 154 Pacific Highway, St Leonards, in the State of New South Wales**

1. BACKGROUND

- 1 Johnson & Johnson Pacific Pty Ltd, ACN 001 121 446 ("the Company") in trade and commerce carries on the business amongst other things of being a distributor, seller and supplier of sanitary products.
- 2 The Company, as part of its business activities, has distributed, sold and supplied within Australia sanitary products including Stayfree Meds tampons ("the product").
- 3 In or about November 1996 the Company commenced a "CASH BACK" advertising promotion in respect to the product ("the promotion").
- 4 The promotion comprises an offer by the Company which is expressed on a sticker label affixed to each package of the product ("the cash back offer").
- 5 The cash back offer in respect of the product is set out on the face of a sticker label affixed to each packet of the product. The cash back offer states:
 - "Peel back for details inside
\$2 cash back
Get \$2 cash back on your first purchase of any of the NEW Meds by Stayfree tampons"
- 6 On the reverse of the sticker label the cash back offer is expressed as being subject to conditions including the conditions -
 - (i) "To receive your \$2 cash back ... buy any pack of the new Meds by Stayfree tampons",
 - (ii) "Offer closes 31 May 1997" and,
 - (iii) "Limit of one per household".
- 7 An illustration contained on the second layer of the cash back offer sticker label and attached to the product makes clear that the new Meds by Stayfree tampons referred to in paragraph 5 hereof ("new Meds by Stayfree tampons") is a different product.
- 8 The Company engaged in the promotion, advertising and sale of the product to which the cash back offer applied until about 4 December 1996.

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- 9 The Company admits that the non disclosure of the conditions of the cash back offer referred to in paragraph 6 hereof amounted to a representation to consumers that:
- (i) they were entitled to claim the cash back offer in respect of the product (and not in respect of any other product),
 - (ii) they were entitled to claim the cash back offer in respect of their first purchase of the product, and
 - (iii) there was no expiry date before which a claim was to be made,
- and was misleading or deceptive conduct or conduct which is likely to mislead or deceive in contravention of section 52 of the Trade Practices Act 1974 ("the Act").
- 10 The Company has since the introduction of the Act instituted compliance programs and educational programs for its directors, employees and agents. The Company intends to continue those programs to prevent so far as is reasonably possible any contravention of the Act by its directors, employees or agents.

2. UNDERTAKINGS

- 2.1 The Company gives the following undertakings to the Australian Competition and Consumer Commission ("the Commission") for the purposes of section 87B of the Trade Practices Act, 1974:
- (a) in respect of its future conduct the Company will not distribute, sell or supply any product to which a cash back offer or other promotion applies where the associated conditions are not disclosed at or before the time of purchase;
 - (b) in respect of the promotion the Company will honour all claims for cash back in respect of a single purchase by an individual which includes either a barcode taken from the product or a barcode taken from the new Meds by Stayfree tampons, made on or before the date of termination of the promotion, namely 31 May 1997;
 - (c) within 7 days hereof the Company will cause a letter to be posted, in accordance with Attachment A, to each head office of the retail outlets in which Stayfree Meds tampons to which the cash back offer applied were offered for sale;
 - (d) the Company will cause an advertisement, in accordance with Attachment B, to be published in the next available issue of the principal daily newspaper in each State and Territory in which the product has been offered for sale to which the cash back offer applied, which advertising will be placed in the general news section of each newspaper and be at least 10 centimetres x 2 columns in size;
 - (e) the Company will cause a letter to be posted, in accordance with Attachment C, to each person who makes a claim in respect of the cash back offer and invite:

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- (i) a further claim or claims in respect of the cash back offer by another member or members of the same household; and
- (ii) a claim for a free packet of the product by that person or persons if the cash back sticker or a barcode from the product or a barcode from the new Meds by Stayfree tampons cannot be produced to the Company;
- (f) within 21 days hereof the Company will identify to the Commission all persons who have made claims under the cash back offer to that date, including the names and addresses of those persons;
- (g) on or before 30 June 1997 the Company will identify to the Commission all persons who have made claims under the cash back offer, including the names and addresses of those persons where those persons have not been identified to the Commission in accordance with paragraph (f) hereof;
- (h) within 60 days hereof review its Trade Practices Act compliance program to ensure it has the following characteristics:-
- (i) Aim - To create a culture of compliance by the company and its agents and to prevent, so far as is reasonably possible, any contraventions of the Act by the company or by its directors, employees or agents;
- (ii) Group Policy - The restatement, by the company, of a policy of strict compliance with both the letter and spirit of the Act throughout the company, and the adoption, restatement, and enforcement, of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act;
- (iii) Compliance Infrastructure - The confirmation of the appointment of a senior executive as the Compliance Officer with overall responsibility for compliance with the Act. The continuation within the company of suitable audit referral procedures to enable potential Trade Practices problems to be identified and dealt with appropriately;
- (iv) Coverage - The compliance program to cover all company directors, employees and agents whose duties could result in their being concerned in conduct that might breach the Act ("the relevant staff");
- (v) Education - Development and implementation of an ongoing education program designed to ensure that the relevant staff are conversant with the provisions of the Act to a level where they can avoid obvious contraventions and can identify more complex potential Trade Practices issues for referral to the Compliance Officer;

(vi) that the content and effect of this undertaking is included in the education program serving as an illustration of conduct which constitutes a contravention of section 52 of the Act; and

(i) The Company further undertakes that:

(i) on or before the expiration of 21 days hereof, and

(ii) immediately upon the termination of the advertised termination date of the promotion, namely 31 May 1997

it will advise the Commission in writing as to all actions it has taken and what procedures it has implemented to comply with this undertaking, and the results thereof.

3. ACKNOWLEDGEMENTS

- 3.1 The Company acknowledges that the Commission will make this undertaking available for public inspection.
- 3.2 The Company acknowledges that the Commission will from time to time publicly refer to this undertaking.
- 3.3 The Company acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS

THE COMMON SEAL OF)
JOHNSON & JOHNSON PACIFIC PTY LTD)
was hereunto affixed by authority of the Board of)
Directors previously given in the presence of:)



[Handwritten signatures]

.....
DIRECTOR

This 6TH day of FEBRUARY 1997

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

[Handwritten signature]
.....
CHAIRMAN

This 10 day of February 1997

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ATTACHMENT A

**JOHNSON & JOHNSON PACIFIC PTY LTD
\$2 CASH BACK OFFER**

STAYFREE MEDS TAMPONS

Johnson & Johnson wishes to advise you that by advertising in principal daily newspapers in each State and Territory Johnson & Johnson will apologise to consumers who were or who may have been misled by its \$2 cash back offer which applied to Stayfree Meds Tampons.

Johnson & Johnson regrets that the cash back offer promotional material did not adequately disclose that the offer was limited to one claim per household and that any claims should be made by 31 May 1997.

Johnson & Johnson also acknowledges that it was not adequately disclosed that the \$2 cash back is payable if a claim is accompanied by a barcode from a packet of new Meds tampons and not from the packet on which the promotional material appears.

As a result of an approach by the Australian Competition and Consumer Commission Johnson & Johnson has undertaken to honour claims made by consumers which include a barcode from a packet on which the promotional material appears or from a packet of new Meds tampons. Only one claim may be made per person but the limitation of one claim per household does not apply.

If a consumer intended to make a claim but no longer has the entry sticker and a barcode from one of the products, Johnson & Johnson will forward to that person free of charge a packet of new Meds tampons. A consumer only has to write to Johnson & Johnson Pacific at the address set out below.

Johnson & Johnson would appreciate you providing this information to any person who makes enquiries in relation to the cash back offer applying to Stayfree Meds purchased at your store.

ATTACHMENT B
(JOHNSON & JOHNSON PACIFIC PTY LTD)
\$2 CASH BACK OFFER
STAYFREE MEDS TAMPONS

Meds Tampons have recently carried a \$2 cash back to encourage consumers to try a new and improved Meds tampons which are now available.

Johnson & Johnson apologises to consumers who were or may have been misled by the cash back offer.

Johnson & Johnson regrets that the cash back offer promotional material did not adequately disclose that the offer was limited to one claim per household and that any claims should be made by 31 May 1997.

Johnson & Johnson also acknowledges that it was not adequately disclosed that the \$2 cash back is payable if a claim is accompanied by a barcode from a packet of new Meds tampons and not from the packet on which the promotional material appears.

Johnson & Johnson undertakes to honour claims made by consumers on the cash back entry form which include a barcode from a packet on which the promotional material appears or from a packet of new Meds tampons. Only one claim may be made per person but the limitation of one entry form per household does not apply.

If you or another member of your household intended to make a claim but no longer have a barcode from one of the products, Johnson & Johnson will forward to you free of charge a packet of new Meds tampons. You only have to write to Johnson & Johnson Pacific at the address set out below.

OR send your claim including a barcode to:

Your continued loyalty to the Meds Tampon brand is highly valued and any inconvenience caused is regretted.

ATTACHMENT C
(JOHNSON & JOHNSON PACIFIC PTY LTD LETTERHEAD)

\$2 CASH BACK OFFER
STAYFREE MEDS TAMPONS

You recently made a claim for a \$2 cash back under a Stayfree Meds tampons promotion.

The cash back promotional sticker on the Stayfree Meds tampon packet invited consumers to send in a barcode from a packet of new Meds. Conditions of entry on the reverse side of the sticker suggested only one claim per household could be made before 31 May 1997.

To avoid confusion Johnson & Johnson is honouring claims made before or after 31 May 1997 if a claim is accompanied by a barcode from a packet on which the promotional sticker appears or from a packet of the new Meds. Only one claim may be made per person but the limitation of one entry form per household does not apply.

It is possible that another member of your household intended to make a claim until that person read the conditions. If that is the case, then Johnson & Johnson apologises and invites that person to make a claim for \$2 cash back.

If another member of your household no longer has the entry form and a barcode from one of the products, but intended to make a claim, then as a gesture of goodwill we will send that person a free packet of new Meds tampons with our compliments, on receipt of the completed coupon attached.

A claim can be made for \$2 cash back or for a free product by sending the entry form and a barcode or the coupon below to: