

TRADE PRACTICES ACT 1974

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

BY

PETERSVILLE LIMITED

A.C.N 004 936 154

and

PETERS FOODS AUSTRALIA PTY LIMITED

A.C.N 000 249 132

BACKGROUND

1. Petersville Limited and Peters Foods Australia Pty Limited trading as Nestle' Dairy Products ('Nestle' Dairy Products') are incorporated in the States of Victoria and New South Wales respectively, and their principal activities include the manufacture and merchandising of dairy products.
2. In May 1997, the Australian Competition and Consumer Commission ('the ACCC') became aware that Nestle' Dairy Products' apricot and tropical flavoured Vitari brand fruit ice confections ('the Vitari') represented in nutritional information panels on the packaging that they contained no sugars in a given 100ml (63g) serving ('the representation') when in fact such a serving of the Vitari contains approximately 13.8 (apricot flavour) and 14.2 (tropical flavour) grams of naturally occurring sugars.
3. The ACCC considers that:
 - a. the nutritional information is misleading conduct and contravenes section 52 of the Trade Practices Act 1974 ('the Act');
 - b. the nutritional information is a false representation concerning the composition of the Vitari and contravenes section 53(a) of the Act; and
 - c. the nutritional information is liable to mislead the public as to the characteristics of the Vitari and contravenes section 55 of the Act.
4. The parties have agreed to resolve this matter by the giving and accepting of undertakings in the terms contained herein.

UNDERTAKINGS

5. Nestle' Dairy Products gives the following undertakings to the ACCC for the purpose of section 87B of the Act. Nestle' Dairy Products undertakes that it:
- a. has implemented procedures to ensure the removal, by no later than 6 June 1997, of the representation from the packaging of the Vitari not yet sold by Nestle' Dairy Products;
 - b. has notified all trade distribution centres and warehouses to whom the Vitari has been supplied by Nestle' Dairy Products that the Vitari has been withdrawn from sale, and it has requested them to remove the Vitari bearing the representation from the trade distribution centres and warehouses, by no later than 6 June 1997;
 - c. will use its best efforts to obtain from all trade distribution centres and warehouses to whom the Vitari has been supplied by Nestle' Dairy Products, by no later than 27 June 1997, a written acknowledgment that the Vitari bearing the representation has been withdrawn from all trade distribution centres and warehouses;
 - d. will not in the future, represent that the Vitari contains no sugars, whether naturally occurring or added, unless that is the fact;
 - e. has arranged to publish corrective advertising, in the form annexed as Attachment A, and of the approximate size 10cm by 2 columns, in the early general news section of the Saturday, 7 June 1997 or Sunday 8 June 1997 edition of a major metropolitan daily newspaper in each State and Territory in which the Vitari was supplied;
 - f. has arranged to issue a letter to community organisations associated with diabetes in each State and Territory listed in Attachment B, advising those organisations of the warning contained in Attachment A, and where requested by the organisation, pay the costs of publishing a suitable notice in a publication of the relevant organisation.

- g. will, within three months of the acceptance of this undertaking, appoint a suitably competent person (whether or not an employee of the Nestle' group in Australia or a consultant) to check the Nestle' group in Australia's current compliance mechanisms to see if they are adequate to ensure that all of the Nestle' group in Australia's product labels meet the Act's requirements. The Nestle' group in Australia will thereafter institute a Trade Practices compliance/training program designed to strengthen a culture of trade practices awareness and compliance throughout the Nestle' group in Australia and to prevent, so far as is reasonably possible, any contraventions of the Act by the Nestle' group in Australia, its directors or employees.
- h. will provide a written report to the ACCC summarising what action it has taken and what procedures it has implemented to comply with the undertakings in:
- (i) sub-paragraph 5(a), (b), (c), (e) and (f) and the results thereof, by no later than 4 July 1997; and
 - (ii) sub-paragraph 5(g) and the results thereof, within 30 days of the end of twelve months from the acceptance of this undertaking.

ACKNOWLEDGMENTS

1. Nestle' Dairy Products acknowledges that the apricot flavoured Vitari contains approximately 13.8 grams of naturally occurring sugars per 100ml (63g) serve. It also acknowledges that the tropical flavoured Vitari contains approximately 14.2 grams of naturally occurring sugars per 100ml (63g) serve.
2. The ACCC acknowledges that since around December 1996, Nestle' Dairy Products has only printed the Vitari packaging with a reference to the level of naturally occurring sugars contained in the Vitari.
3. Nestle' Dairy Products acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
4. Nestle' Dairy Products acknowledges the ACCC's right to make this undertaking available for public inspection and notes that the ACCC will, at its discretion, from time to time publish and publicly refer to this undertaking.

IN WITNESS OF THIS UNDERTAKING:

THE COMMON SEAL of)
PETERSVILLE LIMITED)
was affixed hereunto by authority)
of the Board of Directors in the presence of:)



[Handwritten signature]
.....

Director

Name (printed): Peter L. Mitchell

This 26 day of June, 1997

[Handwritten signature]
Secretary
R. Anderson

THE COMMON SEAL of)
PETERS FOODS AUSTRALIA PTY LIMITED)
was affixed hereunto by authority)
of the Board of Directors in the presence of:)



[Handwritten signature]
.....

Director

Name (printed): P. L. Mitchell

This 26 day of June, 1997

[Handwritten signature]
Secretary
R. Anderson

Accepted by the AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE TRADE
PRACTICES ACT 1974

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.....

Allan Fels

Chairperson

This 15 day of July, 1997.

ATTACHMENT A

VITARI FRUIT ICE CONFECTION

NOTICE TO DIABETICS

The following advice is given regarding the nutritional information panel on some packages of the 1 litre tubs of Apricot and Tropical VITARI fruit ice confection that states that the product contains zero sugar. Whilst there is no added sugar in VITARI, all VITARI fruit ice confections contain naturally occurring sugars, present in the fruit juices used to manufacture the VITARI product.

The carbohydrate value of these sugars has, however, been included in the amount of carbohydrate specified in the nutritional information panel on all VITARI packaging.

As part of any diabetes control programme, diabetics should have regard to the amount of carbohydrate, including sugar, contained in VITARI products as follows:

Variety	Fat	Carbohydrate (Including sugars)	Sugars
VITARI Apricot	0g	15.4g	13.8g
VITARI Tropical	0g	15.5g	14.2g
VITARI Strawberry	0g	15.2g	13.7g
VITARI Wildberry	0g	14.5g	12.5g
Per 100ml (63g) serving			

Consumers who wish to discuss any concerns should contact the Consumer Information Line on 1800 633 200 after 8.30 am on Tuesday 10 June 1997.

ATTACHMENT B

Canberra

Diabetes Australia National Office
5 Phipps Place
DEAKIN ACT 2600

(06) 285 3277

Diabetes Australia -ACT
Diabetes Association
Mulley Street
HOLDER ACT 2611

(06) 288 9830

(06) 288 9874

Sydney

Diabetes Australia - NSW
26 Arundel Street
GLEBE NSW 2037

(02) 9552 9900

(02) 9660 3200

1800 451 737

Juvenile Diabetes Foundation Australia
23 Euroka Street
NARRABUNDAH NSW 2604

(06) 295 6198

Northern Territory

Diabetes Australia - Northern Territory
Darwin
2 Tiwi Place
TIWI NT 0811

(08) 8927 8488

Brisbane

Diabetes Australia Queensland
Ernest St (Cnr Merivale St)
SOUTH BRISBANE QLD 4101

(07) 3846 4600

Adelaide

Diabetes Association of South Australia Inc
Diabetes Australia - South Australia
159 Burbridge Road
HILTON SA 5033

(08) 8234 1977

Hobart

Diabetes Advisory Service
65 Davey Street
HOBART TAS 7000

(03) 6221 6475

Diabetes Australia - Tasmania Inc
79 Davey Street
HOBART TAS 7000

(03) 6224 0252

(03) 6234 5223

Melbourne

Diabetes Australia - Victoria
100 Collins Street
MELBOURNE VIC 3000

(03) 9654 8777

Diabetes Institute (International)
260 Kooyong Road
CAULFIELD VIC 3162

(03) 9258 5050

(03) 9258 5000

Perth

Diabetes Australia - WA
48 Wickham Street
EAST PERTH WA 6004

(08) 9325 7699