

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF
SECTION 87B****BY****PRIVATE FORMULA INTERNATIONAL PTY LTD
(ACN 095 451 442)****PERSON GIVING THE UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Private Formula International Pty Ltd ACN 095 451 442 ("Private Formula") of 200 Claredon Street, South Melbourne in the State of Victoria under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

2. Private Formula is incorporated in the State of Victoria and its principal activities include the manufacturing and wholesaling of cosmetics products, including the Dr LeWinns range of products.
3. On 29 April 2002, the Commission received a complaint that several of Dr LeWinns cosmetic products, distributed by Private Formula, did not appear to comply with the ingredient labelling requirements as specified under the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations* ("the Cosmetics Standard").
4. On 30 April 2002, the Commission attended two retail outlets in metropolitan Perth and identified Private Formula's Dr LeWinns Cosmetic Lift Pack and A+ Revita Cell Cream ("the products") which did not appear to have sufficient ingredient labelling attached, included or displayed with the product to comply with the mandatory Cosmetic Standard.
5. Failure to comply with the ingredients labelling requirement as specified in the Cosmetics Standard is a breach of section 65D(1) of the Act.
6. The Commission raised the complaint with Private Formula who acknowledged that they were aware of the issue and had already begun to take steps to both rectify the problem and ensure that it did not occur again.

7. On 24 September 2002, it was brought to the Commission's attention that some packages of the Private Formula Dr LeWinns Cosmetic Lift Pack and A+ Revita Cell Cream, remained insufficiently labelled to comply with the mandatory Cosmetic Standard.
8. The Commission again contacted Private Formula and raised concerns that the procedures they had put in place to ensure compliance appeared to have failed. Private Formula acknowledged its measures to supply ingredient information, as required by the mandatory Cosmetic Standard, had not been entirely successful and acknowledged that it may have breached section 65D(1) of the Act.
9. Private Formula has offered the Commission this undertaking in accordance with section 87B of the Act.

UNDERTAKINGS

10. In consequence of the matters referred to above, Private Formula gives the following undertakings to the Commission for the purpose of section 87B of the Act.
11. Private Formula undertakes that:
 - (a) it has ceased the distribution of Dr LeWinns Cosmetic Lift Pack and A+ Revita Cell Cream that do not list the ingredients in accordance with the mandatory Cosmetic Standard;
 - (b) with effect from 25 November 2002, the Cosmetic Lift Pack has been distributed with revised packaging, which has been reviewed by the Commission, and that lists the ingredients as required by the mandatory Cosmetic Standard;
 - (c) it has implemented procedures to ensure all ingredients are listed on Dr LeWinns Cosmetic Lift Pack and A+ Revita Cell Cream and are in accordance with the mandatory Cosmetic Standard;
 - (d) within seven days of the acceptance by the Commission of this undertaking, it will instruct its sales staff to telephone individual retailers that have been supplied with the Cosmetic Lift Pack, for the purpose of outlining the nature of this undertaking, and requesting the retailers assistance in complying with the undertaking by replacing current stock with the revised package to be supplied;
 - (e) it will have its sales staff record the name of the person they spoke to and the quantity of Cosmetic Lift packs they have in stock in order that they can then supply the retailers with a sufficient number of revised packages;

- (f) within seven days of telephoning the retailer, it will despatch the appropriate number of revised packages with an accompanying letter, in a form approved by the Commission, reinforcing the importance for retailers to comply with the request to re-package the Cosmetic Lift Pack and requesting a signed acknowledgement be returned to Private Formula that the re-packaging has been completed. A report detail the number of retailers contacted, the number of returned acknowledgements and the contact details of retailers that did not return acknowledgment letters to Private Formula will be forwarded to the Commission by no later than close of business Friday January 17th 2003;
- (g) it will have its area sales staff check every Private Formula account during its up coming sales cycle, which will be completed by 28th February 2002, to ensure that no Cosmetic Lift Packs remain with retailers that do not have the new packaging and forward a report on the outcome of this investigation to the Commission by no later than close of business March 14th 2003;
- (h) within seven days of the acceptance by the Commission of this undertaking it will carry out the corrective advertising by;
- (1) placing a public notice, in a form approved by the Commission, in the public notices section of the Australian newspaper and the Sydney Morning Herald advising consumer who have previously purchased Cosmetic Lift Pack and A+ Revita Cell Cream that they can obtain a list of ingredients from the stockist from whom they purchased the products or by contacting Private Formula direct.
 - (2) placing a notice on their Website advising consumer who have previously purchased Cosmetic Lift Pack and A+ Revita Cell Cream that they can obtain a list of ingredients from the stockist from which they purchased the products or by contacting Private Formula direct.
- (i) to ensure future compliance with the Act, within three months of the acceptance by the Commission of this undertaking, Private Formula will implement a trade practices compliance program that is consistent with Australian Standard 3806 Compliance Programs and will cause an independent person to report to the Commission on (i) its implementation and (ii) its effectiveness for a period of two years, the first such report to be provided on a date no later than twelve months following acceptance of the Undertaking by the Commission; and
- (j) within three months of the acceptance by the Commission of this undertaking it will institute an effective Complaint Handling system consistent with Australian Standard AS 4269 – 1995 (Complaints Handling).

COMMENCEMENT OF UNDERTAKING

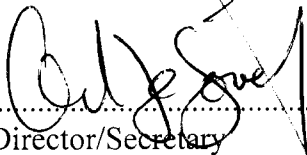
12. This Undertaking comes into effect when:

- (i) This undertaking is executed by Private Formula; and
- (ii) The Commission accepts the undertaking so executed.

ACKNOWLEDGMENTS

- 13. Private Formula acknowledges the Commission's right to make this undertaking available for public inspection.
- 14. Private Formula acknowledges that the Commission will issue a media release in relation to this undertaking and may from time to time publicly refer to the undertaking.
- 15. Private Formula 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 this undertaking and its agreement, Private Formula International Pty Limited, ACN 095 451 442, executes this agreement by authority of the Board of Directors in the presence of:


.....
Director/Secretary


.....

Name (printed):

This 19th day of December 2002


.....

Director

Name (printed):

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

Chairperson

This

23 day of June 2002