



Australian Competition & Consumer Commission

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Our Ref: C1999/328

9 December 1999

Mr Marcus C Blackmore AM
 Chief Executive Officer
 Blackmores Ltd
 23 Roseberry St
 Balgowlah NSW 2093

Dear Mr Blackmore

Section 87B Undertaking

Thank you for your letter of 8 December, 1999 requesting the Commission's agreement to have the Section 87B Undertaking that was proffered to and accepted by the Commission on 17 May 1999 amended to cover bottled liquid cod liver oil only.

I am able to confirm that, as a result of the public consultations on the draft Country of Origin Guidelines for the Complementary Health Care Industry, the Commission has now accepted the industry's view that generally encapsulation of imported raw materials qualifies as substantial transformation, and that if the products also meet the minimum fifty percent local content requirement they may be labelled Made in Australia.

As a consequence, I am able to agree to your request that the following variations be made to the Undertaking effective immediately:

- On page 1 paragraph (7) after the words "Cod Liver Oil Products" insert the words "in liquid form".
- Delete paragraph (10)
- On page 3 of the Undertaking under A (i) and (ii) and B (i) and (ii) after the words "Cod Liver Oil Products" insert the words "in liquid form".
- On page 3 of the Undertaking under B (iii) delete the words "on a regular basis" and at the end add the words "on or before 31 December 1999".



- On page 3 of the Undertaking under D after the words "cod liver oil product" insert the words "in liquid form".
- On page 4 add paragraph F as follows: "Following the discussions and information provided at the public forum the Commission has considered the matter further and has accepted the view that generally encapsulation of imported raw materials qualifies as substantial transformation, and that if the products also meet the minimum fifty percent local content requirement they may be labelled Made in Australia.
- On page 4 under Acknowledgements add a paragraph 3 as follows: "Blackmores and the Commission acknowledge and accept that the foregoing changes amend the Undertaking previously proffered to and accepted by the Commission on 17 May 1999.

Yours sincerely



R F Shogren
Acting Chairman

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

BY

BLACKMORES LIMITED ACN 009 713 437

BACKGROUND

- (1) BLACKMORES LIMITED (ACN 009 713 437) ("Blackmores") is incorporated in the State of New South Wales and its principal activities include the manufacturing and marketing of vitamins, herbal and mineral supplements and nature-based cosmetics.
- (2) Until February 1999 Blackmores supplied a cod liver oil product in liquid form.
- (3) Blackmores ceased supplying its cod liver oil product in liquid form to retailers prior to 1 March 1999, although some retail outlets may still have stock on hand.
- (4) Blackmores continues to market a cod liver oil product in capsule form. The softgel casing used in producing the capsule product is made in Australia and the encapsulation process is undertaken in Australia.
- (5) Blackmores has labelled its cod liver oil products (the "**Cod Liver Oil Products**"), both in liquid and capsule forms, as "Made in Australia". The cod liver oil is sourced from the fresh liver of North Atlantic deep sea cod fish and purchased to pharmacopoeia standards. The Cod Liver Oil Products are sold through pharmacies, health-food stores and selected supermarkets around Australia.
- (6) The Australian Competition and Consumer Commission (the "Commission") found examples of the Cod Liver Oil Products, both in liquid and capsule forms, bearing the representation "Made in Australia" on the labelling, in stores in Tasmania, Victoria, New South Wales, Queensland, Western Australia and South Australia.
- (7) The Commission considers that the use of the statement "Made in Australia" on the labelling of the Cod Liver Oil Products may have misled consumers in breach of the *Trade Practices Act 1974* (the "Trade Practices Act").
- (8) The Commission considers that any other forms of advertising used, including brochure, newspaper and television advertisements, would be likely to have induced customers to attend stores which retail Blackmores products, at which time they were subjected to the representations on the labelling.
- (9) Blackmores has been in correspondence with the Commission since 15

February 1999 and has acknowledged to the Commission that its conduct in labelling its Cod Liver Oil Product in liquid form may have contravened the Trade Practices Act and has:

- (a) on 25 March 1999 undertaken to cease the conduct referred to above;
 - (b) placed advertisements in newspapers previously specified by the Commission advising customers of this contravention;
 - (c) sent overstickers to retail outlets to place over the "Made in Australia" notation on shop stock of the Cod Liver Oil Products. Blackmores' managers and sales staff have been systematically visiting retail outlets of the Cod Liver Oil Products and checking that this action is being attended to and, as necessary, themselves placing overstickers on bottles located in those outlets of Blackmores Cod Liver Oil Products;
 - (d) instituted a trade practices compliance program; and
 - (e) advised the Commission that it will offer a refund to any customer who was misled by any representations with respect to the place of origin of the Cod Liver Oil Product in liquid form.
- (10) The Commission considers the labelling of the Blackmores Cod Liver Oil Product in capsule form contravenes sections 52 and 53(eb) of the Trade Practices Act.
- (11) Since 25 March 1999 Blackmores has taken the following steps in relation to the labelling its Cod Liver Oil Product in capsule form:
- (a) Blackmores' managers and sales staff have been systematically visiting retail outlets of the Cod Liver Oil Products and placing overstickers on bottles located in those outlets of Blackmores Cod Liver Oil Products in capsule form.
 - (b) Blackmores ordered new labels to be designed and printed for the Cod Liver Oil Products in capsule form omitting the notation "Made in Australia". While the first batches of those labels are to hand, the balance is expected to be delivered by the printers to Blackmores' warehouse by the end of May 1999. As from receipt of those labels Blackmores is labelling fresh stock of the Cod Liver Oil Products in capsule form with those new labels.
 - (c) Pending receipt of all of those new labels and the consequential labelling of stock of the Cod Liver oil Products in capsule form, Blackmores has adapted its labelling machinery to overprint and blank out the "Made in Australia" notation on existing warehouse stock of the capsule product for its retail outlets. Since early April 1999 all stock of the Cod Liver Oil Products in capsule form which have been and are

being supplied to Blackmores' retail outlets have the notation "Made in Australia" blanked out as described above.

- (d) Blackmores' managers and sales persons are continuing to monitor retail outlets on an ongoing basis in an effort to ensure that overstickers are stuck on all stock of the capsule Cod Liver Oil Products with the "Made in Australia" notation which is in the market place.
- (12) For the above reasons, Blackmores gives the following undertaking to the Commission for the purposes of section 87B of the Act.

UNDERTAKING

Blackmores undertakes to the Commission as follows:

- A. Blackmores will:
 - (i) not supply to retailers or to the public its Cod Liver Oil Products with the words "Made in Australia" appearing on the label; and
 - (ii) use its best endeavours to ensure that all further supplies of the Cod Liver Oil Products are either overstickered or are relabelled omitting the words "Made in Australia".

- B. Blackmores will use its best endeavours:
 - (i) to cause the removal or overstickering of all of its Cod Liver Oil Products labelled as "Made in Australia" appearing on the label from the shelves of supermarkets, pharmacies, and other retail outlets within Australia;
 - (ii) to cause its managers and sales staff to systematically visit on an ongoing basis all supermarkets, pharmacies and other retail outlets within Australia who stock the Cod Liver Oil Products to ensure that the labels on all stock either:
 - (A) no longer have the notation "Made in Australia"; or
 - (B) have overstickers over the notation "Made in Australia"; and
 - (iii) to report such action on a regular basis to the Commission.

- C. Blackmores will, at its own expense, by 28 May 1999 place an advertisement in the terms of Attachment A to this letter in each major metropolitan daily newspaper circulating in each State and Territory in which the Cod Liver Oil Products are supplied. The advertisement will:
 - (i) be at least either three columns by 120mm in size or two columns by 180mm in size;

- (ii) be printed in at least 12 point for body text; and
- (iii) be placed within the first eleven pages of a weekend edition.

Blackmores will use its best endeavours to ensure that copies of advertisements so placed will be provided to the Commission by close of business 4 June 1999.

- D. Blackmores will pay to each consumer who can verify their purchase of a Blackmores cod liver oil product and who claims to have been misled a full refund on the price paid by the consumer.
- E. Blackmores will participate in any therapeutic goods industry program put into place by the Health Care Council of Australia and approved by the Commission which addresses origin-labelling issues.

ACKNOWLEDGMENTS

1. Blackmores acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion from time to time, publish and publicly refer to this undertaking.
2. Blackmores acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any other person arising from Blackmores' conduct.

IN WITNESS OF THIS UNDERTAKING

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

[Handwritten Signature]
DIRECTOR



[Handwritten Signature]
.....
DIRECTOR

This *seventeenth* day of *May* 1999.

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

[Handwritten Signature]
.....
CHAIRMAN

This *19* day of *May* 1999.

Annexure A**BLACKMORES COD LIVER OIL PRODUCTS**

The Australian Competition and Consumer Commission has raised concerns about the "Made in Australia" claim that Blackmores Ltd previously made on its Cod Liver Oil products. The ACCC considers that consumers may have been misled into believing that the cod liver oil was of Australian origin. Blackmores has amended the labels of the cod liver oil products to delete the "Made in Australia" claim.

Blackmores Cod Liver Oil is in fact sourced from the fresh liver of North Atlantic deep sea cod fish and purchased to pharmacopeia standards. The softgel casing used in producing the Cod Liver Oil capsules is made in Australia and the encapsulation process is undertaken in Australia.

Consumers who consider that they may have been misled by the labelling on this product may bring the product or a proof of purchase to the point of sale for a full refund of the purchase price. Alternatively, consumers may contact Blackmores at 23 Roseberry Street, Balgowlah, NSW 2093 or on telephone (1800)803-760 for a full refund of the purchase price.

ACCC LOGO

Australian Competition and Consumer Commission

This Advertisement has been placed by Blackmores Limited after discussions with the Australian Competition and Consumer Commission (ACCC).