

**Trade Practices Act 1974****Undertaking to the  
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
given for the Purposes of s.87B****BY****SAN REMO MACARONI COMPANY PROPRIETARY LTD  
ACN 007 543 544****BACKGROUND****San Remo Macaroni Company Proprietary Limited**

1. San Remo Macaroni Company Proprietary Limited (ACN 007 543 544) (hereafter "San Remo") is incorporated under the Corporations Law and registered in South Australia.
2. San Remo is an Australian company which operates as a manufacturer, wholesaler and importer of food, primarily pasta and related products.
3. Among other products, San Remo imports and wholesales "San Remo CousCous Medium Grain" (hereafter "San Remo CousCous").
4. San Remo CousCous is manufactured from durum semolina, which is manufactured by grinding durum wheat.

**Glycaemic Index**

5. Glycaemic Index also spelt Glycemic Index (hereinafter "GI") is "a ranking of food based on their immediate affect on blood glucose (blood sugar) levels. Carbohydrate foods that breakdown quickly during digesting have the highest GI. Their blood sugar response is fast and high. Carbohydrates that breakdown slowly, releasing glucose gradually into the bloodstream, have low GI".
6. There are several ways in which GI is thought to be significant to diet. These include the following:
  - (a) Low GI foods are thought to lead to a smaller increase in blood sugar which may help to control diabetes;

- (b) Low GI diets are thought to be helpful in assisting in lowering blood lipids;
  - (c) Low GI diets are thought to be able to improve the body's sensitivity to insulin, and;
  - (d) High GI foods are thought to be helpful in re-fuelling the body's carbohydrate stores after exercise.
7. There has recently been an increase in public awareness of GI. References to GI have become increasingly common in food labelling and in various other sources including those referring to general health diets.
8. GI is expressed as a number less than 100, where the GI of glucose is 100. There is no statutory or regulatory definition of the meaning of the terms "low GI", "medium GI" or "high GI". However:
- (a) Low GI foods are often expressed as being foods with a GI of 55 or lower;
  - (b) Medium GI foods are often expressed as having GI between 56 and 69;
  - (c) High GI foods are foods with a GI higher than 70.

**San Remo CousCous**

9. Between March and August 2003, San Remo distributed San Remo CousCous in packaging bearing a representation (hereinafter "the GI representation").

GI LOW
GLYCAEMIC INDEX

10. San Remo made the GI representation as a result of its investigation into reference material which indicated that durum semolina product had GI values of about 40 to 45 – well within any possible "low GI range". San Remo CousCous is made from Durum Semolina and there was nothing in the material available to San Remo to indicate that San Remo CousCous had any different GI value.

11. The ACCC is concerned that other brands of CousCous have been tested from time to time and to the knowledge of the ACCC these tests have concluded that the GI of CousCous, when served alone, is greater than 60.
12. The ACCC was concerned that there may have been a breach of Section 52 and/or Section 53(a) of the *Trade Practices Act* and has brought this concern to the attention of San Remo.
13. Both the ACCC and San Remo agree that it would be undesirable to continue the distribution of San Remo CousCous where there may be uncertainty about the GI level and, as a consequence, San Remo ceased the distribution of San Remo CousCous with "the GI representation" in August 2003.

#### **Commencement of Undertakings**

14. This Undertaking comes into effect when:
  - (a) The Undertaking is executed by San Remo, and;
  - (b) The ACCC accepts the Undertaking so executed.

#### **Undertakings**

15. San Remo gives the following undertakings to the ACCC for the purposes of Section 87B of the *Trade Practices Act*.
16. San Remo agrees that it will not, for a period of 3 years commencing on the 1<sup>st</sup> day of March 2004, make a representation with respect to the GI of any of its food products unless such representation has a reasonable foundation in scientific knowledge or testing for that representation.
17. The ACCC acknowledges that it may not be necessary for San Remo to test each of its products individually but that it may be reasonable to draw conclusions as to the GI of some products from testing conducted on similar products.
18. San Remo undertakes that within sixty days of the execution of this Undertaking, it will identify and retain an appropriately qualified independent compliance professional ("the compliance professional") for the purpose of developing

an appropriate compliance program to ensure San Remo's ongoing compliance with Part V of the *Trade Practices Act*.

19. San Remo undertakes that it will cause the compliance professional to analyse San Remo's business and develop a program consistent with Australian Standard 3806 and that such compliance program will be forwarded to the ACCC for comment within 60 days of the execution of this Undertaking, and implemented within 30 days of the ACCC's comments on the program.
20. The compliance program will remain in force for a minimum period of 5 years and during that time both parties may agree to amend the program to accord with relevant changes to the *Trade Practices Act* 1974 (TPA).
21. As part of the implementation of the compliance program San Remo will:
  - (a) Appoint a senior person to oversee TPA compliance;
  - (b) Conduct regular TPA training to relevant staff including senior managers;
  - (c) Ensure a complaint handling system is maintained;
  - (d) Ensure that TPA compliance is accepted into San Remo policies and practices with the approval of an endorsement of the Board and Management;
  - (e) Maintain a register of TPA related breaches and complaints.
22. San Remo will have its compliance program audited by an independent compliance professional at 12 monthly intervals, commencing 12 months following the implementation of the program. In making such review:
  - (a) The auditor will conduct a critical review of both the compliance management system and its effectiveness in securing compliance with the *Trade Practices Act*;
  - (b) The auditor will make such recommendations as the auditor considers necessary to ensure that the compliance program is effective;
  - (c) San Remo will promptly implement any recommendations which are necessary to ensure that such compliance program is effective;

- (d) The auditor will provide the ACCC with a copy of the audit report no later than 30 days after the completion of each audit report.
23. San Remo will, if requested by the ACCC, provide documents and information in respect of matters the subject of the compliance program resulting from this Undertaking.
24. San Remo acknowledges that this Undertaking in no way limits or excludes the obligation of San Remo to comply with the relevant food standards and codes from time to time.
25. San Remo acknowledges that the Commission will make this Undertaking available for public inspection.
26. San Remo also acknowledges that the Commission will refer publicly to this Undertaking from time to time.
27. San Remo acknowledges that this Undertaking in no way derogates from the rights and remedies available to any person who is not a party to this Undertaking as a result of the conduct set out above.

**IN WITNESS of these undertakings and its agreement the Common Seal of San Remo Macaroni Company Pty Ltd (ACN 007 543 544) was hereunto affixed by authority of its board of Directors in the presence of:**

Director:

*A. L. Brodie*

Director/Secretary:

*A. L. Brodie*



Dated the

*THIRD*

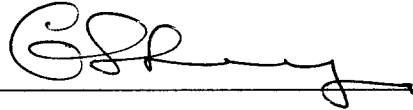
day of

*DECEMBER*

2003

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

Chairman:

A handwritten signature in cursive script, appearing to read 'G. Gray', is written over a horizontal line.

Dated the

15<sup>th</sup>

day of

December

2003