

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****BIO MAGNETIC THERAPY PTY LTD (ACN 061 215 692)****AND****CRAIG TRINDER****PERSON GIVING UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (“the Commission”) by:
  - Bio Magnetic Therapy Pty Ltd (ACN 061 215 692) (“Bio Magnetic Therapy”) of 13-15 Ereton Drive, Labrador, Queensland; and
  - Craig Trinder, of Unit 16B, 24 Breaker Street, Main Beach, Queensland;under section 87B of the *Trade Practices Act 1974* (Cth) (“the Act”).

**BACKGROUND**

2. Bio Magnetic Therapy is a company incorporated in Australia which engages in the business of marketing and retailing therapeutic magnetic products.
3. During the period from June 1998 to present day (the “Relevant Period”), Bio Magnetic Therapy promoted and sold therapeutic magnetic products to the general public including:
  - (a) mattress underlays;
  - (b) pillow pads;
  - (c) universal back supports;
  - (d) reflex soles;
  - (e) elbow supports;
  - (f) wrist supports;
  - (g) ankle supports;
  - (h) neck and shoulder supports; and
  - (i) knee supports

(together referred to as the “Products”).

4. The Products were advertised by the following methods:

- in magazines, including *Good Medicine*, *Woman’s Day*, *Women’s Weekly*, *Take 5* (published by ACP Publishing Pty Limited); *New Idea*, *That’s Life*, *Your Garden* (published by PMP Limited); *Gardening Australia* (published by ABC Company Ltd);
- in newspapers, including *The Sunday Mail*, *Sunday Times* and *Sunday Telegraph* (published by The New Corporation Limited); *Sun Herald* and *Sunday Age* (published by John Fairfax Holdings Limited);
- on Bio Magnetic Therapy’s Internet website located at <http://www.biomagnetictherapy.net>;
- on television, including regular 4-minute infomercials on Network Ten’s *Good Morning Australia* program; and

5. Craig Trinder is a director of Bio Magnetic Therapy and has responsibility for the management of Bio Magnetic Therapy and the promotion of the Products by Bio Magnetic Therapy.

6. Bio Magnetic Therapy and Craig Trinder acknowledge that, in the course of promoting the Products, Bio Magnetic Therapy made representations to the general public, in connection with the supply or possible supply of the Products, which may have:

- (a) constituted conduct which was misleading or deceptive or likely to mislead or deceive;
- (b) represented that the Products have sponsorship approval, performance characteristics, uses or benefits which they, in fact, do not have;
- (c) constituted making false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy,

and included the following representations:

- (i) Bio Magnetic Therapy provides relief for sufferers of arthritis, back pain, headaches, migraines, insomnia, high blood pressure, depression, skin conditions, dermatitis, vascular disorders, soft tissue damage, spinal degeneration, cramps, muscular stiffness and soreness, rheumatoid arthritis, chronic fatigue, cystitis, sciatica and tired and aching feet;
- (ii) Bio Magnetic Therapy offer guaranteed pain relief – in writing – for conditions like osteo-arthritis, back pain, poor circulation, neck and shoulder pain, headaches and migraines, hip and joint pain, insomnia and muscular pain;
- (iii) 85% of Bio Magnetic Therapy’s clients, within a short time of using its products, are pain free and no longer require prescription drugs;
- (iv) Clinical case studies have shown an over 90% success rate with chronic physical and mental disorders by using magnetic therapy;

- (v) [*Bio Magnetic Therapy's*] pioneering products are the result of a collaborative effort between Bio Magnetic Therapy and some of the worlds leading universities and teaching laboratories;
  - (vi) Bio Magnetic Therapy stimulates the body's immune system, drawing red blood cells to the inflamed areas, increasing lymphatic drainage and removing toxins and blocked waste products. Which allows nutrients to flow freely once again;
  - (vii) Case studies show that the therapeutic magnets within Bio Magnetic Therapy stimulate the body's endorphins and circulation;
  - (viii) Bio Magnetic Therapy clinical case studies have shown an over 90% success rate. No wonder its used by over 100 million people worldwide for everything from arthritis, back pain, headaches and migraines to insomnia, muscular stiffness and soreness, skin conditions, fatigue and more!;
  - (ix) It's a therapy that's as common as aspirin in Japan, one of the healthiest nations in the world. In fact, due to the success of yearlong medical case studies in three major hospitals, the Japanese Ministry of Health has approved it;
  - (x) If you do not experience pain relief or enjoy increased energy and sleep more soundly, return [the Products] to Bio Magnetic Therapy. You'll get a full product refund!
7. Bio Magnetic Therapy acknowledges that the representations made to the general public, in connection with the supply or possible supply of the Products, may have been false, misleading or deceptive and in contravention of sections 52, 53(c), and 53(g) of the Act.
  8. The Commission acknowledges that Bio Magnetic Therapy and Craig Trinder have expressed concern that consumers may have been misled or deceived by the representations made by Bio Magnetic Therapy in relation to the Products and that Bio Magnetic Therapy and Craig Trinder have provided every assistance to the Commission in order to resolve this matter.

## **UNDERTAKINGS**

9. Bio Magnetic Therapy and Craig Trinder give the following undertaking to the Commission for the purposes of Section 87B of the Act.
10. Bio Magnetic Therapy undertakes that it will not, by itself, its servants or agents, or otherwise howsoever, in connection with the supply or promotion of the Products or any similar therapeutic magnetic product engage in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of section 52 of the Act by making representations including representations to the following or similar effect:
  - (a) Bio Magnetic Therapy provides relief for sufferers of arthritis, back pain, headaches, migraines, insomnia, high blood pressure, depression, skin conditions, dermatitis, vascular disorders, soft tissue damage, spinal degeneration, cramps, muscular stiffness and soreness, rheumatoid arthritis, chronic fatigue, cystitis, sciatica and tired and aching feet;

- (b) Bio Magnetic Therapy offer guaranteed pain relief – in writing – for conditions like osteo-arthritis, back pain, poor circulation, neck and should pain, headaches and migraines, hip and joint pain, insomnia and muscular pain;
- (c) 85% of Bio Magnetic Therapy’s clients, within a short time of using its products, are pain free and no longer require prescription drugs;
- (d) Clinical case studies have shown an over 90% success rate with chronic physical and mental disorders by using magnetic therapy;
- (e) [*Bio Magnetic Therapy’s*] pioneering products are the result of a collaborative effort between Bio Magnetic Therapy and some of the worlds leading universities and teaching laboratories;
- (f) Bio Magnetic Therapy stimulates the body’s immune system, drawing red blood cells to the inflamed areas, increasing lymphatic drainage and removing toxins and blocked waste products. Which allows nutrients to flow freely once again;
- (g) Case studies show that the therapeutic magnets within Bio Magnetic Therapy stimulate the body’s endorphins and circulation;
- (h) Bio Magnetic Therapy clinical case studies have shown an over 90% success rate. No wonder its used by over 100 million people worldwide for everything from arthritis, back pain, headaches and migraines to insomnia, muscular stiffness and soreness, skin conditions, fatigue and more!;
- (i) It’s a therapy that’s as common as aspirin in Japan, one of the healthiest nations in the world. In fact, due to the success of yearlong medical case studies in three major hospitals, the Japanese Ministry of Health has approved it;
- (j) If you do not experience pain relief or enjoy increased energy and sleep more soundly, return [the Products] to Bio Magnetic Therapy. You’ll get a full product refund!

unless, at the time the representation is made:

- (A) the representation is true and accurate; or
- (B) if the representation is with respect to any future matter, Bio Magnetic Therapy has reasonable grounds for making the representation; or
- (C) Bio Magnetic Therapy possesses and relies upon competent reliable scientific evidence that substantiates that representation.

11. Bio Magnetic Therapy undertakes that it will not, by itself, its servants or agents, or otherwise howsoever, in connection with the supply or promotion of the Products or any similar therapeutic magnetic product engage in conduct that falsely represents that the products have a sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have in contravention of section 53(c) of the *Trade Practices Act 1974* (Cth) by making a representation to the following, or similar, effect:

(a) that Bio Magnetic Therapy's pioneering products are the result of a collaborative effort between Bio Magnetic Therapy and some of the worlds leading universities and teaching laboratories;

unless, at the time the representation is made, the representation is true and accurate.

12. Bio Magnetic Therapy undertakes that it will not, by itself, its servants or agents, or otherwise howsoever, in connection with the supply or promotion of the Products or any similar therapeutic magnetic product engage in conduct that falsely represents or misleads as to the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy in contravention of section 53(g) of the *Trade Practices Act 1974* (Cth) by making representations to the following, or similar, effect:

(a) that Bio Magnetic Therapy offer guaranteed pain relief – in writing – for conditions like osteo-arthritis, back pain, poor circulation, neck and should pain, headaches and migraines, hip and joint pain, insomnia and muscular pain; and

(b) that if customers do not experience pain relief or enjoy increased energy and sleep more soundly, they can return the Product purchased to Bio Magnetic Therapy and will receive a full product refund

unless, at the time the representation is made:

(A) the representation is true and accurate; and

(B) the existence of specific conditions upon which the payment of a full refund is dependant is also clearly referred to.

13. Bio Magnetic Therapy undertakes that it will only make representations referring to clinical trials or scientific studies of magnetic therapy products where full particulars or the citation of the scientific test or trial is referred to and included in the promotional material and/or website.

14. Craig Trinder will adhere to the undertakings as described in paragraph 10 to 13 inclusive above.

15. Bio Magnetic Therapy shall, at its expense:

(a) within 28 days of the date of this undertaking, for a period of two consecutive weeks, cause to be published within the 'Health and Beauty' section of the 'Body + Soul' Liftout of The Sunday Mail, the advertisement described in **Schedule A** to this undertaking;

(b) within 14 days of the date of this undertaking, cause to be published on its Internet web site located at <http://www.biomagnetictherapy.net> for a period of 60 days the consumer notice in the form at **Schedule B** to this undertaking; and

16. Bio Magnetic Therapy will create and maintain, at its own expense, a Trade Practices Compliance Program ("Compliance Program"). In summary, Bio Magnetic Therapy's Compliance Program will -

- (a) Demonstrate Bio Magnetic Therapy's commitment to a policy of compliance with the Act and will seek to establish, throughout Bio Magnetic Therapy, a culture of compliance with the Act;
- (b) Analyse and respond to the conduct engaged in by, or on behalf of, Bio Magnetic Therapy which has resulted in this undertaking being sought by, and provided to, the Commission pursuant to section 87B of the Act;
- (c) Identify any risk areas in Bio Magnetic Therapy's promotion of the Products and ensure that Bio Magnetic Therapy develops a proper system for vetting and approving promotional material in order to eliminate or minimise the risk of contravening the Act in the future;
- (d) Provide practical and documented compliance training in relation to sections 52 and 53 of the Act for all relevant Bio Magnetic Therapy management and employees so that breaches and potential breaches of the Act may be prevented or otherwise detected.

17. In particular, Bio Magnetic Therapy will –

- (a) Submit a draft of the Compliance Program to the Commission within 30 days of the date of this undertaking for consideration and comment.
- (b) Incorporate into the Compliance Program, and implement as part of the Program, any reasonable changes to the draft program that are recommended by the ACCC in writing.
- (c) Implement the Compliance Program within 30 days of the ACCC advising whether any changes are required to the draft program, as referred to in subparagraph (a) above.
- (d) Ensure that the Compliance Program covers all managers, employees and agents of Bio Magnetic Therapy whose duties could result in their being involved in conduct that might breach the Act;
- (e) Send a message from the General Manager/CEO to all managers, employees and agents stating the following;
  - (i) That Bio Magnetic Therapy has provided a section 87B undertaking to the Commission and that the undertaking is available for staff to view;
  - (ii) That Bio Magnetic Therapy is committed to achieving compliance with the Act;
  - (iii) That Bio Magnetic Therapy will ensure that all staff are aware of their responsibilities under the Act; and
  - (iv) That there will be sanctions for non-observance of the Act and sets out what those sanctions will be.
- (f) Appoint the General Manager or a Senior Executive employed by Bio Magnetic Therapy as Compliance Manager with overall responsibility for implementation and effectiveness of Bio Magnetic Therapy's Compliance Program. Bio Magnetic Therapy will advise the Commission of the name of

the person appointed as Compliance Manager within two (2) months of Bio Magnetic Therapy signing this undertaking;

- (g) Ensure that for a period of three (3) years from the signing of the undertaking that the Commission is notified within thirty (30) days of any appointment of a new General Manager or Senior Executive to the position of Compliance Manager.
  - (h) Implement systems and procedures that ensure all actual or potential breaches of the Act are reported to the Compliance Manager immediately. When an actual or potential breach is detected and reported, Bio Magnetic Therapy staff involved are to be immediately re-trained about their legal obligations under the Act and tested to ensure that they understand these legal obligations. Operating systems and procedures must be altered so as to prevent recurrence of the breach.
  - (i) Ensure that the Compliance Manager is accountable to the CEO of Bio Magnetic Therapy for compliance issues and that a documentary record is kept of actual or potential breaches which are reported, along with any other relevant compliance issues, to the CEO on a monthly basis.
18. Craig Trinder undertakes that he will facilitate the implementation and maintenance of Bio Magnetic Therapy's Compliance Program in accordance with paragraphs 17 and 18 above.
19. Within six months of the making of this order, Craig Trinder and Bio Magnetic Therapy's Compliance Manager ( if this is a separate individual) will attend a Trade Practices Compliance Seminar ("the Seminar") conducted by a person, or a person chosen from a panel, nominated by the Australian Compliance Institute (ACI). The Seminar will consist of presentations relating to Part V of the Act including specifically sections 52, 53(c) and 53(g).
20. Within one week of attending the Seminar, Craig Trinder and Bio Magnetic Therapy's Compliance Manager ( if this is a separate individual) will advise the Commission of their attendance at the Seminar, including the date, place and length of the Seminar, the name of the person who conducted the Seminar, and sufficient details of the matters presented during the Seminar to enable the Commission to ascertain the content of the Seminar and will furthermore provide the Commission with a certificate of attendance if one was made available at the completion of the seminar.

## **COMMENCEMENT OF UNDERTAKING**

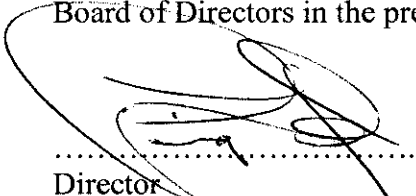
21. This undertaking comes into effect when:
- (j) The undertaking is executed by Bio Magnetic Therapy and Craig Trinder; and
  - (k) The Commission accepts the executed undertaking.

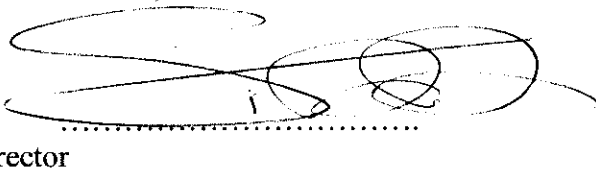
**ACKNOWLEDGMENTS**

- 22. Bio Magnetic Therapy and Craig Trinder acknowledge the Commission's right to make this undertaking available for public inspection and note that the Commission may, at its discretion, from time to time, publish and publicly refer to this undertaking.
- 23. Bio Magnetic Therapy and Craig Trinder acknowledge and accept that this undertaking in no way derogates from the rights and remedies available to any person arising from Bio Magnetic Therapy's conduct.

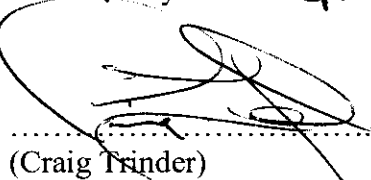
IN WITNESS of this undertaking and its agreement

The common seal of Bio Magnetic Therapy Pty Ltd )  
(ACN 061 215 692) was affixed by authority of the )  
Board of Directors in the presence of: )

  
.....  
Director

  
.....  
Director

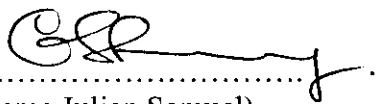
This 21 day of Sept 2004

  
.....  
(Craig Trinder)

This 21 day of Sept 2004



ACCEPTED by the Australian Competition and Consumer Commission pursuant to section 87B of the Trade Practices Act 1974

  
.....  
(Graeme Julian Samuel)

Chairman - ACCC

This 30<sup>th</sup> day of September 2004



## **SCHEDULE A**

### **NEWSPAPER CONSUMER NOTICE**

1. The notice:

- (a) shall appear in the 'Health and Beauty' Section of the 'Body + Soul' Liftout of The Sunday Mail for two consecutive weeks;
- (b) shall appear on the right hand side of a right hand-page of the newspaper, occupying a space not less than one-quarter of the total page size;
- (c) shall be legible and the type shall be at least 12 point, Times New Roman font and right and left justified;
- (d) shall have a bold type prominent heading in at least 18 point; and
- (e) shall display the Bio Magnetic Therapy company logo at the top.

2. The notice shall be:

## **CONSUMER NOTICE**



Biomagnetic Therapy Pty Ltd wishes to advise their customers of the following:

That some claims contained in advertising of its therapeutic magnetic products prior to 2002 may have been, or had the potential to be, false, misleading or deceptive in contravention of sections 52, 53(c), and 53(g) of the *Trade Practices Act 1974* ('the Act') (Cth) although it was never its intention to contravene the Act.

Concerns about the way in which some of Biomagnetic Therapy's products were represented in its advertising prior to 2002 were raised by the Australian Competition and Consumer Commission ('the ACCC') and an investigation was undertaken. Biomagnetic Therapy worked closely with the ACCC during their enquiry and upon notification of their concerns stopped making the representations in question.

Bio Magnetic Therapy and Craig Trinder have now provided the following undertakings to the ACCC pursuant to s87B of the Act:

- Biomagnetic will no longer make any claims regarding its therapeutic magnetic products unless it is able to demonstrate that it has reasonable grounds for making the representation, for example, reliable scientific evidence;
- The results of any scientific test or clinical trial referred to will be reproduced on the website;
- Biomagnetic has developed and implemented a Trade Practices Compliance Program and key staff will receive training specifically in relation to Sections 52 and 53 of the Act.

## **SCHEDULE B**

### **WEBSITE CONSUMER NOTICE**

1. The website notice:
  - (a) shall be legible and the type shall be at least 12 point, Times New Roman font and right and left justified;
  - (b) shall have a bold type prominent heading in at least 18 point;
  - (c) shall display the Bio Magnetic Therapy company logo at the top;
  - (d) shall appear in an automatically generated active pop-up window or message box, whereby a member of the public is required to interact with the window or message box to close it;
  - (e) shall not be less than 50% of the size of the computer screen; and
  - (f) shall appear immediately upon access by a consumer to the homepage of the website [www.biomagnetictherapy.net](http://www.biomagnetictherapy.net)
2. The notice shall be: ...

## **CONSUMER NOTICE**



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That some claims contained in advertising of its therapeutic magnetic products prior to 2002 may have been, or had the potential to be, false, misleading or deceptive in contravention of sections 52, 53(c), and 53(g) of the *Trade Practices Act 1974* ('the Act') (Cth) although it was never its intention to contravene the Act.

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