

TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION
AND CONSUMER COMMISSION GIVEN FOR
THE PURPOSES OF SECTION 87B
BY
NATURAL GREEN PTY LIMITED
ACN. 071 764 102

PERSON GIVING THE UNDERTAKING

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Natural Green Pty Limited (ACN 071 764 102) (**Natural Green**) of Unit 2, 3 Pat Devlin Close, Chipping Norton in the State of New South Wales, under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

Cosmetics Ingredients

- (1) Natural Green is incorporated in New South Wales and its principal activities include the manufacture and supply of cosmetic products to retail outlets throughout Australia.
- (2) The Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (**Cosmetics Standard**) requires, amongst other things, that cosmetic product ingredients be listed in descending order by volume or mass either:
 - a) on the container; or
 - b) if the product is not packed in a container - on the product; or
 - c) if this is not possible because of the size, shape or nature of the product or its container, a list of the product's ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients of the product.
- (3) Section 65D of the TPA, prohibits a corporation from supplying goods that do not comply with the requirements of a prescribed consumer product information standard.
- (4) In May 2008, as part of marketplace monitoring, ACCC staff purchased a Natural Green product described on its packaging as "24 Hour Time Release Cream with Placenta & Vitamin E – 80g" (**Product**). The Product was supplied in a glass jar packaged with a cardboard box. The ingredients of the product were not listed on the jar or on the cardboard box.
- (5) By supplying the Product without a list of ingredients as required by the Cosmetics Standard, Natural Green acknowledges that it contravened section 65D of the TPA.

Australian Made Logo

- (6) Since 1 July 1999 Australian Made Campaign Limited (AMCL) is the approved certifier of users of the Australian Made logo, a triangular shape which bears the image of a kangaroo and the words “Australian Made” (Australian made logo).
- (7) Section 53(c) of the TPA states that a corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services represent that goods or services have sponsorship, approval or affiliation they do not have.
- (8) Section 52 of the TPA states that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- (9) Both the jar and the cardboard box in which the Product was supplied depicted the Australian Made logo. At the time that the product was purchased by the ACCC, Natural Green was not certified by AMCL to use the Australian Made logo in respect of the Product.
- (10) By depicting the Australian Made logo on the jar and the cardboard box in which the Product was supplied, Natural Green acknowledges it contravened sections 52 and 53(c) of the TPA.
- (11) Natural Green has since obtained certification from AMCL to use the Australian Made logo in respect of the Product.

Purpose of Undertaking

- (12) Natural Green has offered this Undertaking to the ACCC for the purposes of section 87B of the TPA.

COMMENCEMENT OF UNDERTAKING

- (13) This Undertaking comes into effect when:
 - a) the Undertaking is executed by Natural Green; and
 - b) the ACCC accepts the Undertaking so executed.
- (14) Upon the commencement of this Undertaking, Natural Green undertakes to assume the obligations set out in paragraphs 15 to 21 (below).

UNDERTAKINGS

Natural Green undertakes to the ACCC, for the purposes of section 87B of the TPA, that it:

- (15) has ceased the supply of the Product which does not comply with the Cosmetics Standard;

- (16) will not depict or use the Australian Made logo, without certification from AMCL;
- (17) will within 30 days of the commencement of this Undertaking, at its own expense, cause to be published an information notice in the form of **Annexure A** and the terms in **Annexure B** to this Undertaking in the following newspaper:
 - a) *The Australian* newspaper.
- (18) will use its best endeavours to ensure that within 30 days of the commencement of this Undertaking all retailers to which it supplied the Product display a notice at the point of sale in their stores in the form and terms of **Annexure A** to this Undertaking for a period of no less than 3 months;
- (19) will within 30 days of the commencement of this Undertaking, conduct an audit of its range of products to identify any products that do not comply with the Cosmetics Standard, and take action on any products that do not comply with the Cosmetics Standard;
- (20) will within 60 days of the commencement of this Undertaking, complete a cycle of attendances upon wholesalers and retailers to whom it has supplied cosmetic products to inform those traders that that non-compliant cosmetic products are withdrawn from sale; and
- (21) will within 90 days from the date of the Undertaking coming into effect, at its own expense, implement trade practices training for staff in relation to sections 52, 53 and 65D, as well as a corporate complaints handling system covering sections 52, 53 and 65D of the TPA, in accordance with the requirements set out below:

Training

- a) Within 90 days of this Undertaking coming into effect, all officers and employees of Natural Green who are engaged in senior executive, marketing or sales functions (**Relevant Staff**) will attend practical trade practices training focusing on the application of sections 52, 53 and 65D of the TPA.
- b) Natural Green will ensure that the training referred to in paragraph a) above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- c) Natural Green will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph a) above to the ACCC within 14 days of completion of the training verifying that such training has occurred.
- d) Natural Green will use its best endeavours to procure from the compliance professional or legal practitioner referred to in paragraph b) a printed handout of practical trade practices issues covered in the training course referred to in paragraph a) above.

- e) Natural Green will ensure that the printed handout referred to in paragraph d) above is provided to any Relevant Staff commencing employment with Natural Green after the training referred to in paragraph a) above is completed.
- f) If requested by the ACCC, Natural Green will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the training referred to in paragraph a) above or in respect of the printed handout referred to in paragraph d) above.

ACKNOWLEDGMENTS

- (22) Natural Green acknowledges that the ACCC will make this Undertaking available for public inspection.
- (23) Natural Green further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
- (24) Natural Green further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by Natural Green Pty Limited (ACN 071 764 102) pursuant to section 127(1) of the Corporations Act 2001:

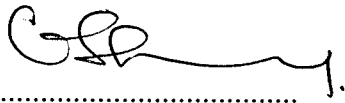


.....

Secretary/Director

This 4th day of December 2008

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



.....

Graeme Julian Samuel
Chairperson

This 28th day of January 2009

INFORMATION NOTICE

INFORMATION NOTICE

A correction from Natural Green

[Insert Natural Green logo]

Recently, we at Natural Green supplied to retail outlets throughout Australia the product, "24 Hour Time Release Cream with Placenta & Vitamin E", supplied in an 80g glass jar and packaged in a cardboard box. The ingredients of the product were not listed on the jar or on the cardboard box.

The Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991 (**the Cosmetics Standard**) requires, amongst other things, that cosmetic product ingredients be listed in descending order by volume or mass either: on the container; or if the product is not packed in a container - on the product; or if this is not possible because of the size, shape or nature of the product or its container, a list of the product's ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients of the product.

The cosmetic product ingredients in the product are; xxxxxxx

To compensate customers who have already purchased the 24 Hour Time Release Cream with Placenta & Vitamin E and believe they have been misled, we are offering a refund for the full purchase price of product. For further information about claims for refunds you should contact Natural Green on (XX) XXXX XXXX.

This corrective advertisement has been placed at the cost of Natural Green pursuant to undertakings accepted by the Australian Competition and Consumer Commission.

PUBLICATION TERMS

- (i) be published in the first 25 pages of the general news section of *The Australian* newspaper.
- (ii) have the following specifications;
 - a) of a size not less than 10cm long and 12cm wide;
 - b) a banner in at least 12 point Times New Roman 100% white font, centred and in a black box measuring a minimum 8mm in depth;
 - c) a headline in at least 14 point Times New Roman 100% black font, that consists of a minimum of 20 percent of the entire notice;
 - d) body text that will be in at least 10 point Times New Roman 100% black font and left justified;
 - e) margins which are at least 2mm in size;
 - f) a border which will be 100% black in a minimum of 2 point width; and
 - g) the logo of Natural Green,