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### **TRADE PRACTICES ACT 1974**

Undertaking to the Australian Competition and Consumer Commission given for  
the purposes of section 87B

by

**ATQOL Pty Ltd**

**ACN 086 436 615**

#### **PERSONS GIVING THIS UNDERTAKING**

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by ATQOL Pty Ltd (ACN 086 436 615) (**ATQOL**), registered at 22 Garden Head, Southport in the State of Queensland for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**).

#### **BACKGROUND**

- (2) ATQOL, a family-owned company, is the manufacturer and supplier of the 'Anti-Snor Therapeutic Ring' (**the Anti-Snor Ring**). ATQOL has been selling the Anti-Snor Ring in Australia and overseas since 1999. The product is available for sale both directly via ATQOL's website ([www.nosnor.com](http://www.nosnor.com) (**ATQOL Website**)) and at many of the major chemist and health store chains in Australia.
- (3) The Anti-Snor Ring is a ring worn on the small finger of the left hand and is designed so as to place pressure on the centre of the finger on the palm side of the hand.
- (4) From at least 27 August 2009, ATQOL has made a number of representations on the ATQOL Website regarding the effectiveness of the Anti-Snor Ring, including that it:
- (a) will stop a person from snoring (*for example*, 'Stop snoring today' and 'the Anti-Snor ring will allow you to achieve a quiet, peaceful night sleep free of snoring');
  - (b) will relieve sinus problems;
  - (c) will relieve restless sleep and insomnia;
  - (d) has a 'proven history of successful drug free treatment of snoring'; and
  - (e) is 'Tested and recommended by a Physician'

(together "**Website Representations**").

- (5) ATQOL has made similar representations in television advertisements as to the ability of the Anti-Snor Ring to stop a person from snoring, including one advertisement which it caused to air on Channel 7 on 25 August 2009, depicting two animated male characters in hospital beds, one of whom is snoring. The Anti-Snor Ring is placed on the man's finger and the snoring stops. A voice-over states 'Try acupressure, an ancient practice, a modern miracle' followed by a still picture of a sleeping couple in bed looking peaceful and the voice-over statement 'Anti-Snor Acupressure Ring — available from all leading pharmacies and health food retailers'. Lastly, text appears on the screen saying 'the Father's Day gift Mum will love' ("**Television Representation**").
- (6) At the time of making the Website Representations and the Television Representation, ATQOL:
  - (a) did not have medical or other scientific evidence that the Anti-Snor Ring is able to stop users from snoring, relieve sinus problems or relieve restless sleep or insomnia;
  - (b) had no basis for saying that the Anti-Snor Ring has a 'proven history of successful drug free treatment of snoring' other than the fact it has significant sales of the Anti-Snor Ring, the fact that it was continually re-ordered by retailers and the fact that few customer sought refunds;
  - (c) had no basis for saying that its product had been 'Tested and recommended by a Physician' except a reference to a testimonial provided by E. Kleiner M.D in the United States who had used the product himself.
- (7) Section 52 of the Act prohibits a corporation in trade or commerce from engaging in conduct which is misleading or deceptive or likely to mislead or deceive. Further, section 51A of the Act states that where a corporation makes a representation with respect to any future matter and the corporation does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.
- (8) Section 53(c) also prohibits a corporation from falsely representing goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits that they do not have.
- (9) The ACCC considers that by engaging in the conduct set out in paragraphs 4 to 6 above, ATQOL contravened sections 52 and 53(c) of the Act on the basis that:
  - (a) ATQOL had no reasonable grounds to make an absolute representation that the Anti-Snor Ring could stop a person from snoring, relieve sinus problems, restless sleep or insomnia;
  - (b) consumers are likely to have thought that a statement that the Anti-Snor Ring had a "proven history of successful drug free treatment of snoring" indicated that such results were drawn from clinical trials or some other

sort of testing when in fact no such testing has been carried out by ATQOL;

- (c) consumers are likely to have thought that the statement "Tested and recommended by a Physician" indicated that a medical expert had undertaken some sort of scientifically rigorous testing of the Anti-Snor Ring when in fact ATQOL's only basis for this statement was that one US Physician had himself used the product and provided a testimonial.

(10) In response to the ACCC's concerns, ATQOL:

- (a) admits that the conduct described in paragraphs 4 to 6 above was likely to contravene sections 52 and 53(c) the Act; and
- (b) offers this Undertaking to the ACCC.

#### **COMMENCEMENT OF UNDERTAKING**

(11) This undertaking comes into effect when:

- (i) the undertaking is executed by ATQOL; and
- (ii) the ACCC accepts the undertaking so executed.

(12) Upon the commencement of this undertaking, ATQOL undertakes to assume the obligations set out in paragraph 13 below.

#### **UNDERTAKINGS**

(13) ATQOL undertakes for the purposes of section 87B of the Act:

- (i) that for 3 years from the date of this Undertaking coming into effect, it will not, and will ensure that its subsidiaries (if any) will not, in trade or commerce:
  - (a) make any absolute claims to the effect that the Anti-Snor Ring:
    - i. will be able to stop a person from snoring,
    - ii. will relieve sinus problems; or
    - iii. will relieve restless sleep or insomnia;
  - (b) make any representation to the effect that the Anti-Snor Ring has "a proven history of successful drug free treatment of snoring" unless ATQOL has caused clinical trials to be undertaken that prove such history; or
  - (c) make any representation to the effect that the Anti-Snor Ring has been tested, approved or recommended by a member of the health profession unless that health professional has undertaken testing in accordance with the Note for Guidance on Good

Clinical Practice (CPMP/ICH/135/05) the internationally accepted standard for the designing, conducting, recording or reporting of clinical trials, to the extent it has been adopted by the Therapeutic Goods Administration,

- (ii) that it will:
  - (a) amend the ATQOL Website and any current and/or future advertisements or publications, within 2 weeks of the date of this Undertaking coming into effect, to comply with the Undertakings in paragraph 13(i), including removal of the representations described in paragraphs 4 and 5;
  - (b) ensure that all future representations made in the promotion and/or sale of the Anti-Snor Ring comply with Part V of the Act;
  - (c) establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure A** within 3 months of the date of this Undertaking coming into effect, being a program designed to minimise ATQOL's risk of future breaches of Part V of the Act and to ensure its awareness of the responsibilities and obligations in relation to the requirements of Part V of the Act;
  - (d) maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect.

#### **ACKNOWLEDGMENTS**

- (14) ATQOL acknowledges that:
  - (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
  - (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
  - (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY**

ATQOL Pty Ltd (ACN 086 436 615) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

.....  
Secretary/Director

.....  
Director

This 18<sup>th</sup> day of March 2010

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

.....  
Graeme Julian Samuel  
Chairman

This 18<sup>th</sup> day of March 2010

## **Annexure A**

### **TRADE PRACTICES COMPLIANCE PROGRAM**

#### **LEVEL 1**

ATQOL will establish a Trade Practices Compliance Program that complies with each of the following requirements:

#### **1. Training**

- 1.1. Within 3 months of this Undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, John Vivian Woodley (Jnr) will attend practical trade practices training focusing on Part V of the Act.
- 1.2. ATQOL will ensure that the training referred to in paragraph 1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.
- 1.3. ATQOL will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

#### **2. Complaints handling**

2.1. ATQOL will:

- 2.1.1. develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
  - 2.1.2. provide the ACCC with an outline of the complaint handling system developed within two month of the Undertaking coming into effect.
3. If requested by the ACCC, ATQOL will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.