

**TRADE PRACTICES ACT 1974**

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

by

Australian Health & Nutrition Association Limited ACN 096 452 872

**Persons giving this undertaking**

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Australian Health & Nutrition Association Limited, trading as Sanitarium, ACN 096 452 872, of 1 Sanitarium Road, Berkeley Vale, New South Wales (**Sanitarium**) for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**).

**Background**

- (2) Sanitarium is registered as a non-profit organisation based in New South Wales. Sanitarium manufactures and promotes a wide range of food products including the Weet-Bix and Light 'n' Tasty breakfast cereals.
- (3) From February 2009 to October 2010 Sanitarium sold breakfast cereals in packages that contained:
- (a) ingredients panels which listed the fruit content of the product as a particular percentage, whereas a significant portion of the fruit content actually comprised other substances such as humectant, sugars, gelling agents and wheat fibre which had been used in the processing of the fruit as follows;

<b>Product</b>	<b>Percentage of fruit on ingredients panel</b>	<b>Percentage of actual fruit in product</b>	<b>Percentage of 'other substances' from fruit pieces in product</b>
Weet-Bix Wild Berry Bites	15%	6.8%	8.2%
Weet-Bix Apricot Bites	15%	6.5%	8.5%
Granola Clusters	6%	2.4%	3.6%
Light'n'Tasty Triple Berry	8%	3%	5.0%

- (b) prominent and bold colouring, in association with images of fruits and fruit descriptor words such as 'Wild Berry' and 'Apricot', whereas those cereals contained only a small proportion of the prominently imaged and/or described fruit and the predominant proportion of the fruit comprised of substances other than berry.
- (4) The ACCC considers that by engaging in the conduct and making the representations outlined at paragraph 3 Sanitarium:
- (a) overstated the percentage of fruit in the listed cereal products; and
  - (b) through the use of colour, images and associated words on the packaging of its 'Weet-Bix Wild Berry Bites' and 'Weet-Bix Apricot Bites' products, created an overall impression to consumers that those products contained a greater quantity of the prominently depicted fruit than was actually the case;

and accordingly contravened sections 52 and 53(c) of the Act.

- (5) In response to the ACCC's concerns Sanitarium has:
- (a) admitted that the conduct outlined at paragraph 3 may have contravened the Act;
  - (b) fully cooperated with the ACCC and promptly amended the packaging of the products listed at paragraph 3 and reformulated the Bites products; and
  - (c) offered the ACCC this undertaking.

#### **Commencement of undertaking**

- (6) This undertaking comes into effect when:
- (i) the undertaking is executed by Sanitarium; and
  - (ii) the ACCC accepts the undertaking.
- (7) Upon the commencement of this undertaking, Sanitarium undertakes to assume the obligations set out in paragraphs 8 (i-vii) below.

#### **Undertakings**

- (8) Sanitarium undertakes for the purposes of section 87B of the Act that:
- (i) for a period of three years, it will not, in trade or commerce, use combinations of colours, words and/or images on the packaging of its cereal products that are likely to mislead consumers as to the prominence of an individual food type as an ingredient of its cereals.

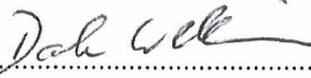
- (ii) it will list the fruit content on the ingredient panels of its breakfast cereals so that the percentage attributed to the fruit accurately and clearly reflects the amount of fruit and excludes any other substances which may have been used in the processing of the fruit.
- (iii) it will change the ingredient panel labelling of its cereals by providing a breakdown of all the ingredients in a manner consistent with the sample ingredient panel set out in Annexure A.
- (iv) it will, within 30 days of this Undertaking coming into effect, implement a product labelling audit of all its food products to ensure its products accurately describe the food contained within, and on completion of the audit provide written results to the ACCC;
- (v) it will at its own expense, revise and enhance its existing Trade Practices Compliance Program to ensure it accords with the requirements set out in Annexure B, within 3 months of the date of this Undertaking coming into effect, being a program designed to minimise Sanitariums' risk of future breaches of sections 52 and 53(a) of the Act and to ensure its awareness of the responsibilities and obligations in the relation to the requirements of those sections;
- (vi) it will 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; and
- (vii) it will provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

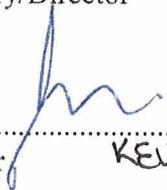
### **Acknowledgments**

- (9) Sanitarium acknowledges that:
- (i) the ACCC will make this Undertaking publicly available including the publishing of 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;
  - (iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
  - (iv) a summary of the ACCC Compliance Program Review reports referred to in Annexure A of the Undertaking may be held with this Undertaking in the public register.

**Executed by**

Australian Health & Nutrition Association Limited ACN 096 452 872 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.

  
.....  
Secretary/Director DALE WILLIAMS

  
.....  
Director KEVIN JACKSON

This.....26.....day of.....November.....2010

OR

The Common Seal of ACN 096 452 872 was affixed in the presence of:

.....  
Secretary/Director

.....  
Director

This.....day of.....2010

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

  
.....

Graeme Julian Samuel  
Chairman

This.....10<sup>th</sup>.....day of.....December.....2010

## Annexure A

### Sample ingredient list

#### SAMPLE

Ingredients: Cereals (65%)[wholegrains (44%) (**oats**, **rye**, whole **wheat** flour), corn, rice, rice flour, corn meal], sugar, sweetened cranberries [cranberry (1.5%), sugar, humectant (glycerol), sunflower oil, acidity regulator (330)], sunflower oil, palm oil (contains **soy**), golden syrup, freeze dried fruit [berries (0.7%) {strawberry, raspberry}, sour cherries], corn maltodextrin, raspberry juice concentrate (1%), salt, **wheat** gluten, flavour, **barley** malt extract, acidity regulator (330), minerals (calcium carbonate, iron), emulsifier (471), vitamins (niacin, riboflavin, thiamine, folate).

## **Annexure B**

### **TRADE PRACTICES COMPLIANCE PROGRAM**

Australian Health & Nutrition Association Limited Trading as Sanitarium (**Sanitarium**) will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

#### **1. Appointments**

- 1.1. Within one month of the date of the undertaking coming into effect Sanitarium will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**Compliance Officer**).

#### **2. Training**

- 2.1. Within 3 months of this undertaking coming into effect, and thereafter at least once a year for the period of the undertaking, all officers and employees of Sanitarium who are engaged in senior executive, marketing or sales functions will undergo practical trade practices training focusing on sections 52 and 53 of the *Trade Practice Act 1974*.
- 2.2. Sanitarium will ensure that the training referred to in paragraph 2.1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
- 2.3. Sanitarium will provide a written statement or certificate from the trade practices professional who administers the training referred to in paragraph 2.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

#### **3. Complaints handling**

##### **3.1. Sanitarium will:**

- 3.1.1. review and enhance its existing procedures for recording, storing and responding to trade practices complaints within two months of this undertaking coming into effect; and
  - 3.1.2. provide the ACCC with an outline of the complaint handling system developed within two months of this undertaking coming into effect.
4. If requested by the ACCC, Sanitarium 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.