

**Undertaking to the Australian Competition and Consumer Commission**  
Given under section 87B of the *Competition and Consumer Act 2010* (Cth)  
by MOO PREMIUM FOODS PTY LTD ACN 156 113 709

**1. Person giving the Undertaking**

1.1 This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by MOO PREMIUM FOODS PTY LTD ACN 156 113 709 (**MOO**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**) (**Undertaking**).

**2. Background**

2.1 MOO manufactures and supplies dairy products (predominantly yoghurt) (**Products**) which are sold in supermarkets and in convenience stores to consumers in Australia.

2.2 MOO promotes its Products through its website (<https://www.moopremiumfoods.com.au/>), on social media platforms (e.g., Facebook and Instagram), and on the packaging of the Products.

**3. ACCC Concerns**

3.1 Since at least November 2021 to the Commencement Date of this Undertaking (**Relevant Period**), MOO, in trade or commerce, in connection with the supply, possible supply and the promotion of its Products, made representations on the packaging of its Products, and on its website and social media platforms, that the packaging was made from '100% ocean plastic' which gave the impression it was made from plastic waste collected directly from the ocean (**Ocean Plastic Representations**).

3.2 The Ocean Plastic Representations were conveyed at various times during the Relevant Period, including by way of:

- (a) statements on the front of the Products' packaging: '100% ocean plastic\* recycled tubs' and '100% ocean plastic\*', as depicted in the below image:



- (b) publishing images of the Products on its website and on social media platforms, in some cases accompanied by an “#oceanplastic” hashtag.
- 3.3 In fact, the packaging of the Products was not made from ‘100% ocean plastic’, or plastic waste collected directly from the ocean. Rather, it was made from what MOO described as ‘reclaimed ocean bound plastic’, being abandoned plastic waste that was collected within 50km of the shoreline in regions where waste management is inexistent or inefficient.
- 3.4 The packaging of the Products also included statements on the top and back of the packaging, in much smaller font than the headline ‘100% ocean plastic\*’ statement on the front, such as:
- (a) *“Our tubs and lids are made from 100% Ocean Bound Plastic”,* and
  - (b) *“\*This yoghurt tub and lid are made from 100% reclaimed Ocean Bound Plastic”.*

However, the ACCC considers that these disclaimers were insufficient to overcome the misleading headline Ocean Plastic Representations.

- 3.5 The ACCC considers that by making the Ocean Plastic Representations described in paragraphs 3.1 to 3.3 above, MOO:
- (a) engaged in conduct that was misleading or deceptive or was likely to mislead or deceive;
  - (b) made false or misleading representations regarding the composition and the benefits of the packaging of its Products; and
  - (c) engaged in conduct liable to mislead the public as to the nature or characteristics of the packaging of its Products,
- in contravention of sections 18, 29(1)(a), 29(1)(g), and 33 of the Australian Consumer Law (ACL), being Schedule 2 of the CCA.

#### **4. Admissions and Resolution**

- 4.1 As a result of the ACCC’s investigation and in response to the ACCC’s concerns, MOO:
- (a) admits that it engaged in conduct that was likely to have contravened sections 18, 29(1)(a), 29(1)(g), and 33 of the ACL;
  - (b) has updated or is currently updating the packaging design of each of its Products, as well as its website and social media, to remove the Ocean Plastic Representations;

- (c) in relation to any remaining stockpile of unused packaging bearing the previous design (**Previous Packaging**):
  - (i) has arranged for stickers to be applied over the Ocean Plastic Representations before it is supplied into the marketplace by MOO;
  - (ii) to the extent any Previous Packaging is unable to be utilised for any reason, intends to also explore options for recycling it;
- (d) has cooperated with and assisted the ACCC during its investigation; and
- (e) has offered this Undertaking to the ACCC to address the ACCC's concerns.

4.2 MOO acknowledges that there are likely to be some Products still available for purchase in some supermarkets and/or convenience stores in Previous Packaging bearing the Ocean Plastic Representations as at the Commencement Date (**Already In Market Products**). MOO will therefore publish a corrective notice as outlined in paragraph 6.4.

## 5. Commencement of this Undertaking

5.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by MOO; and
- (b) this Undertaking so executed is accepted by the ACCC (**Commencement Date**).

5.2 This Undertaking has effect for 3 years from the Commencement Date (**Term**).

5.3 From the Commencement Date, MOO undertakes to assume the obligations set out in paragraphs 6.1 to 6.5 below for the purposes of section 87B of the CCA.

## 6. Undertakings

### *Ocean Plastic Representations*

6.1 From the Commencement Date, other than in relation to Already In Market Products, MOO undertakes that it will not supply Products in packaging bearing the Ocean Plastic Representations or otherwise make the Ocean Plastic Representations unless it has a proper basis to substantiate the representations, for example, by being able to substantiate that the recycled plastic used to make the packaging is collected directly from the ocean.

- 6.2 MOO undertakes, in relation to all packaging of its Products (other than Already In Market Products) and any other marketing or consumer-facing materials (including, but not limited to, all content created and published on any website or social media webpages and profiles controlled by MOO), to:
- (a) within 14 days from the Commencement Date, undertake a comprehensive review of any statements made in relation to the standard, quality, composition, performance characteristics or benefits of its goods, including, but not limited to, the term 'ocean plastic' and any other terms and phrases to a similar effect or that convey such a meaning; and
  - (b) within 30 days from the Commencement Date, advise the ACCC of all actions taken by MOO, including, but not limited to, removing or amending statements in response to the review at subparagraph 6.2(a).
- 6.3 MOO undertakes to:
- (a) at least once a year during the Term, complete an internal audit of the raw materials used in the manufacturing of the packaging of its Products (other than Already In Market Products) to confirm the precise nature of the plastic resin used to manufacture the packaging, including the specific location from which the plastic waste which is then recycled into the plastic resin is collected;
  - (b) ensure any representations MOO makes about the nature or composition of the packaging of its Products (other than in relation to Already In Market Products) are consistent with the results of the audits outlined in paragraph 6.3(a).

*Corrective Notice*

- 6.4 To address the ACCC's concerns about Ocean Plastic Representations on Already In Market Products MOO undertakes that it will, within 7 days of the Commencement Date:
- (a) publish a copy of the corrective notice set out in **Annexure A** on the homepage of its website (<https://www.moopremiumfoods.com.au/>) and maintain it there for a period of 60 consecutive days. The notice shall appear in an automatically generated active pop-up window or message box, or as a prominent link to the corrective notice at the top of the homepage, and shall appear immediately to consumers that access the homepage of the website; and
  - (b) issue posts on MOO's Facebook and Instagram social media channels that include the corrective notice at **Annexure A** and pin these posts on each of these respective social media channels for at least 60 consecutive days.

## *Compliance Program*

6.5 MOO undertakes to, at its own expense:

- (a) Establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure B**, being a program designed to minimise MOO's risk of future breaches of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the ACL;
- (b) maintain and continue to implement the Compliance Program for the Term; and
- (c) provide, a copy of any documents required by the ACCC in accordance with this Undertaking, including **Annexure B**.

## **7. ACCC Enquiries**

7.1 For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with MOO, and MOO will respond to such enquiries, at its own expense, within a reasonable time.

## **8. Acknowledgements**

8.1 MOO acknowledges that:

- (a) 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;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

8.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and the CCA for penalties or other remedies in the event MOO does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

**Executed as an Undertaking**

Executed by MOO PREMIUM FOODS PTY LTD ACN 156 113 709 pursuant to section 127(1) of the *Corporations Act 2001* by:

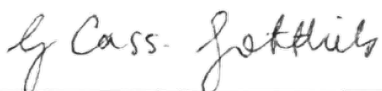
 Signature of director	 Signature of a director/company secretary (delete as appropriate)
PETER GROGAN Name of director (print)	MICHAEL WILLIAM SANDERS Name of director/company secretary (print)
24/11/23 Date	24/11/23 Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

24 November 2023

Date

and signed on behalf of the Commission:

Chair 

Date 24 November 2023

## **Annexure A**

### **CORRECTIVE NOTICE**

MOO PREMIUM FOODS PTY LTD (MOO), wishes to advise consumers about certain 'ocean plastic' claims made about its Premium Yoghurt and Greek Style Yoghurt range product packaging.

Since November 2021 to [Commencement Date], MOO made claims on the packaging of its products, and on its website and social media platforms, that its product packaging was made from '100% ocean plastic' which gave the impression it was made from plastic waste collected directly from the ocean.

In fact, it was made from what is referred to as 'ocean bound plastic', which claims to be abandoned plastic waste collected within 50km of the shoreline in regions where waste management is inexistent or inefficient and at risk of ending up in the ocean.

Following concerns raised by the Australian Competition and Consumer Commission (ACCC), MOO has committed to remove the '100% ocean plastic' claims from its product packaging, website, and social media platforms. These commitments are outlined in a recent court enforceable undertaking accepted by the ACCC to resolve the matter, available here: [insert URL].

MOO apologises to any consumers who may have been misled by '100% ocean plastic' claims about its product packaging.

## Annexure B

### COMPETITION AND CONSUMER COMPLIANCE PROGRAM

Within 4 months of the undertaking under s 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by MOO to the ACCC (**Undertaking**) coming into effect (**Commencement Date**), MOO will establish a competition and consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

#### Staff Training and Induction

1. MOO will, within 4 months of the Commencement Date and thereafter at least once a year for the Term, cause the following persons to attend ACL compliance training (**Staff Training**):
  - 1.1 Officers, employees, representatives and agents of MOO, whose duties could result in them being concerned with conduct that may contravene the ACL;  
and
  - 1.2 executive and non-executive directors of MOO.
2. MOO will ensure that an awareness of MOO's obligations under the ACL forms part of the induction (**Induction**) of all new:
  - 2.1 Officers, employees, representatives and agents of MOO, whose duties could result in them being concerned with conduct that may contravene the ACL;  
and
  - 2.2 executive and non-executive directors of MOO.
3. MOO will ensure that the Staff Training and Induction is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (the **Trainer**).

#### Complaints Handling System

4. Within 4 months of the Commencement Date, MOO will develop and implement procedures for identifying, classifying, storing and responding to competition and consumer law complaints (**Complaints Handling System**).

#### Provision of Compliance Program Documents to the ACCC

5. MOO will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date.
6. If requested by the ACCC during the period of 5 years following the Commencement Date, MOO will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including Staff Training and Induction materials, a written statement or certificate from the relevant Trainer verifying that such training and/or induction has occurred, and an outline of the Complaints Handling System.



## **ACCC Recommendations**

7. MOO will promptly and fully implement any recommendations that the ACCC considers reasonably necessary to ensure that MOO maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

