

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF
SECTION 87B**

BY

**YOUNGDOWN PTY. LTD TRADING AS GO-LO
(ACN 003 393 548)**

1. PURPOSE

- 1.1 Youngdown Pty Ltd, trading as Go-Lo has engaged in conduct which has raised issues in relation to the labelling of cosmetic goods, the guidelines for which are set out in the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations. The purpose of this undertaking is to ensure that Go-Lo implements specific measure as well as a general program to ensure compliance with the Act.

2. PERSON GIVING THE UNDERTAKING

- 2.1 This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Youngdown Pty Ltd pursuant to section 87B of the Act.

3. BACKGROUND

- 3.1 Go-Lo, a division of Youngdown Pty Ltd, is a retailer of consumer and household goods, with over stores in New South Wales and the ACT. Go-Lo's registered address is 70 Orange Grove Road, Liverpool, in the State of New South Wales.
- 3.2 During May 1998, the Commission received a complaint that a number of cosmetic goods, available at Go-Lo stores, failed to meet the mandatory cosmetics standard. In response to this complaint, an officer of the ACCC attended the Go-Lo store at Bondi Junction and purchased a number of goods which failed to meet the standard as their ingredients were not printed in English on the labelling of the product, or on the product itself.
- 3.3 The Commission has formed the view that Go-Lo has contravened section 66C of the Trade Practices Act, as a result of its failure to comply with the provision of the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations*

- 3.4 Go-Lo has advised the Commission that the products identified as failing to meet the requirements of the cosmetics standard were acquired from a cheap source of supply and imported into Australia. Go-Lo relied on its suppliers to ensure that the goods met all legal requirements.
- 3.5 Go-Lo has agreed to place stickers containing the appropriate labelling over the offending products to ensure compliance with the mandatory cosmetics standard. Go-Lo has also offered to implement a program to ensure future compliance with the letter and spirit of the Act.
- 3.6 Go-Lo has agreed to be bound by the following undertaking given to the Commission pursuant to section 87B of the Act.

4. COMMENCEMENT OF UNDERTAKING

- 4.1 This undertaking comes into effect when:
 - (a) executed by Go-Lo; and
 - (b) being so executed, is accepted by the Commission.

5. UNDERTAKING FOR THE PURPOSE OF SECTION 87B

- 5.1 Go-Lo will ensure that products sold at Go-Lo retail stores will be labelled in accordance with the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations*. Regulation 5(1) requires the ingredients of cosmetic products to be listed on the container, or on the product itself if the product is not packaged, in descending order by volume or mass. Regulations 5(2)-(4) prescribes acceptable alternatives for the order of listing ingredients. Regulation 6 requires that the list of ingredients must be prominently show, clearly legible and in English. Go-Lo undertakes to place appropriately labelled stickers on products which fail to meet the mandatory cosmetics standard. A copy of the publication entitled "Ingredient Labelling of Cosmetics," produced by The Federal Bureau of Consumer Affairs, which includes a copy of the relevant standard, is attached to this undertaking and marked attachment "A."
- 5.2 Within two months of the commencement of this undertaking, Go-Lo will develop for consideration by the Commission, a trade practices compliance program, incorporating the following characteristics:
 - (a) Aim:

to create a culture of compliance within Go-Lo, and prevent so far as reasonably possible, any contravention of the Act by Go-Lo, its directors, employees or agents.

(b) Policy:

the formal adoption by Go-Lo of a policy of strict compliance with both the letter and spirit of the Act within Go-Lo and the enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(c) Compliance Infrastructure:

the appointment of an appropriately qualified named director as the Go-Lo compliance officer with overall responsibility for trade practices compliance.

(d) the compliance program is to cover all directors, employees and agents of Go-Lo whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education:

development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the most appropriate person in the Go-Lo compliance infrastructure;
- (ii) persons with responsibility within the Go-Lo compliance infrastructure can effectively carry out these responsibilities; and
- (iii) the Go-Lo Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice), identify issues which require referral to Go-Lo's solicitors.

(f) Go-Lo will make whatever changes to the draft program that the Commission may reasonably require and will then prepare and submit to the Commission a trade practices compliance program which shall be a document comprising the draft program with all changes reasonably required by the Commission incorporated therein.

(g) Go-Lo will implement the trade practices compliance program within three (3) months of the Commission advising of the changes

it requires to the draft program and the trade practices compliance program will remain in force for a minimum period of two (2) years from the commencement of this undertaking.

6. ACKNOWLEDGMENTS

- 6.1 Go-Lo acknowledges that the Commission will make this undertaking available for public inspection.
- 6.2 Go-Lo further acknowledges that the Commission may from time to time publish and publicly refer to this undertaking at its discretion.
- 6.3 Go-Lo further acknowledges that this undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.
- 6.4 Go-Lo further acknowledges that reports arising from the undertakings referred to in paragraph (2) above, will be held with this on the Commission public register.

IN WITNESS of these undertakings and its agreement the common seal of Youngdown Pty Ltd (ACN 003 393 548) was hereunto fixed by authority of the Board of Directors in the presence of



.....
Secretary

.....
Director

20 This day of October 1998

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

.....
Alan Fels

(Professor Alan Fels)
Chairman

Acting

This 30th day of October 1998