

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE  
PRACTICES ACT 1974**

**GIVEN BY**

**SANCELLA PTY LIMITED (ACN 005 442 375)  
of 30-32 Westall Road, Clayton, in the State of Victoria**

**1. BACKGROUND**

1. Sancella Pty Limited, ACN 005 442 375 ("the Company") in trade and commerce carries on the business amongst other things of being a distributor, seller and supplier of sanitary products.
2. The Company, as part of its business activities, has distributed, sold and supplied within Australia sanitary products including Libra Cotton tampons referred to as ("the product").
3. In or about June 1996 the Company commenced a "CASH BACK" advertising promotion in respect to the product ("the promotion").
4. The promotion comprises an offer by the Company which is expressed on a sticker label affixed to each package of the product to send money to a purchaser of the product ("the cash back offer").
5. The cash back offer made in respect to the product is expressed, inter alia, on the face of a sticker label affixed to each packet of the product stating -  
  
"\$3.00 CASH BACK  
Just send any Libra Cotton barcode to the address overleaf"  
  
and on the reverse of the sticker label as being subject to conditions including the conditions -
  - (i) "\$3 cash back offer is valid until 31 March 1997",
  - (ii) "Only one entry per person allowed by enclosing one barcode from any Libra Cotton pack",
6. The limitations and conditions of the cash back offer are contained on the reverse of the sticker label.
7. Following an investigation, the Australian Competition and Consumer Commission ("the Commission") contends that the Company engaged in the promotion, advertising and sale of Libra Cotton tampons to which the cash back offer applied during the period June 1996 to 4 November 1996.

8. The Commission contends that the non disclosure of the condition of the cash back offer of one entry per person referred to in paragraph 5 hereof at the time of purchase represented to consumers that they were entitled to claim the cash back offer for every purchase of the product to which the offer applied and is misleading or deceptive conduct in contravention of section 52 of the *Trade Practices Act 1974* ("the Act").

## **2. UNDERTAKINGS**

- 2.1 Sancell Pty Limited gives the following undertakings to the Australian Competition and Consumer Commission for the purposes of section 87B of the Trade Practices Act, 1974:
- (a) in respect of its future conduct the company will not distribute, sell or supply any product to which a cash back offer or other promotion applies where the associated conditions are not disclosed at or before the time of purchase; and
  - (b) in respect of the promotion the company will honour all claims for cash back in respect of single or multiple purchases, made on or before the advertised date of termination of the promotion, namely 31 March 1997; and
  - (c) within 7 days hereof cause a letter to be posted, in accordance with Schedule A hereto, to each person who has to that date made a claim in respect of a single purchase of the product and invite the recipient to:
    - (i) make a further claim or claims in respect of the cash back offer; and
    - (ii) make a claim for a free packet of the product; and
  - (d) within 21 days hereof identify to the Commission all persons who have made claims under the cash back offer in respect of single and multiple purchases of the product, including the names and addresses of those persons; and
  - (e) within 60 days hereof review its Trade Practices Act compliance program for the company to ensure it has the following characteristics:-
    - (i) Aim - To create a culture of compliance by the company and its agents and to prevent, so far as is reasonably possible, any contraventions of the Act by the company or by its directors, employees or agents;
    - (ii) Group Policy - The formal adoption, or reaffirmation, by the company, of a policy of strict compliance with both the letter and spirit of the Act throughout the company and adoption, or reaffirmation, and enforcement of sanctions against any director,

employee or agent who is knowingly or recklessly concerned in a contravention of the Act;

- (iii) Compliance Infrastructure - The appointment of a senior executive as the Compliance Officer with overall responsibility for compliance with the Act. The creation within the company of suitable audit referral procedures to enable potential Trade Practices problems to be identified and dealt with appropriately;
  - (iv) Coverage - The compliance program to cover all company directors, employees and agents whose duties could result in their being concerned in conduct that might breach the Act ("the relevant staff");
  - (v) Education - Development and implementation of an education program designed to ensure that the relevant staff are conversant with the provisions of the Act to a level where they can avoid obvious contraventions and can identify more complex potential Trade Practices issues for referral to the Compliance Officer;
  - (vi) that the content and effect of this undertaking is included in the education program serving as an illustration of conduct the Commission contends constitutes a contravention of section 52 of the Act;
- (f) The Company further undertakes that:
- (i) on or before the expiration of 21 days hereof, and
  - (ii) immediately upon the termination of the advertised termination date of the promotion, namely 31 March 1997

it will advise the Australian Competition and Consumer Commission in writing as to all actions it has taken and what procedures it has implemented to comply with this undertaking, and the results thereof.

### **3. ACKNOWLEDGEMENTS**

- 3.1 The Company acknowledges that the Australian Competition and Consumer Commission will make this undertaking available for public inspection.
- 3.2 The Company acknowledges that the Australian Competition and Consumer Commission will from time to time publicly refer to this undertaking.
- 3.3 The Company acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS

THE COMMON SEAL OF )  
SANCELLA PTY LIMITED )  
was hereunto affixed by authority )  
of the Board of Directors )  
previously given in the presence of:



*[Handwritten Signature]*  
\_\_\_\_\_  
DIRECTOR

*[Handwritten Signature]*  
SECRETARY

This 29<sup>th</sup> day of November 1996.

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

*[Handwritten Signature]*  
\_\_\_\_\_  
CHAIRMAN

This 30<sup>th</sup> day of November 1996.

## SCHEDULE A

### (SANCELLA LETTERHEAD)

(Name)  
(Address)

Dear (Name)

### LIBRA COTTON CASH BACK OFFER

You recently made a claim for a \$3 cash back under a Libra Cotton tampon promotion.

The cash back promotional sticker on the Libra Cotton tampon packets invited consumers to send any barcode to the stated address. Conditions of entry on the reverse side of the sticker suggested that only one claim per person could be made.

To avoid any confusion between the front of the packet and the conditions, Sancella Pty Limited, the manufacturer of Libra Cotton tampons, has honoured all cash back claims, including multiple claims from the one person.

It is possible that some consumers might have intended to make a multiple claim until they read the conditions. If that is the case with your claim, then Sancella apologises and invites you to send in your further barcodes (or Libra Cotton packets bearing the sticker) and we will pay the full cash back of \$3 for each barcode.

If you no longer have your barcodes or packets, but had intended to make a multiple claim, then as a gesture of goodwill we will send you a free packet of Libra Cotton tampons, with our compliments, on receipt of the completed coupon attached.

Simply send in your barcodes or the completed coupon to:

(Address)

Libra Cotton (promotional statement) and we thank you for your custom.

(Sancella Senior Executive)

## COUPON

Name:.....

Address:.....  
.....

I purchased .....packets of Libra Cotton tampons from .....  
(name of retail outlet) on..... (approximate date).

Signed:.....