

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

**GIVEN BY**

**CARTER WALLACE (AUSTRALIA) PTY LTD (ACN 008 446 053)  
of 6 Aquatic Drive, Frenchs Forest, in the State of New South Wales**

**1. BACKGROUND**

1. Carter Wallace (Australia) Pty Ltd, ACN 008 446 053 ("the Company") in trade and commerce carries on the business amongst other things of being a distributor, seller and supplier of facial cleansing products.
2. The Company, as part of its business activities, has distributed, sold and supplied within Australia facial cleansing products including Aapri Foaming Wash Gel referred to as ("the product").
3. In or about October 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 -  
  
"\$2.00 CASH BACK  
Offer closes 31.12.96. See under for details"  
  
and upon removal of the top layer of the sticker label as being subject to conditions including the conditions -
  - (i) "Closing date last mail 31.12.96", and
  - (ii) "Only one claim per household",
6. The limitations and conditions of the cash back offer are contained on the second layer of the sticker label which is not visible until the top layer of the sticker label is removed.
7. Following an investigation, the Australian Competition and Consumer Commission ("the Commission") contends that the Company engaged in the promotion, advertising and sale of Aapri Foaming Wash Gel to which the cash back offer applied during the period commencing on a date unknown to the Commission to 7 November 1996.

8. The Commission contends and the Company admits that the non disclosure of the condition of the cash back offer of one claim per household 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 Carter Wallace (Australia) Pty Ltd 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) within 7 days hereof the Company will cause a letter to be posted, in accordance with Attachment A , to each head office of the retail outlets in which Aapri Foaming Wash Gel to which the cash back offer applied were offered for sale; and
- (c) the Company will cause an advertisement, in accordance with Attachment B, to be published in the next available issue of each of the following newspapers:

Telegraph Mirror  
 Brisbane Courier Mail  
 Adelaide Advertiser  
 Melbourne Herald Sun  
 Northern Territory News  
 Canberra Times  
 Perth West Australian  
 Hobart Mercury  
 Launceston Examiner  
 Burnie Advocate

which advertising will be placed within the general news section of each issue of each newspaper and be at least 10 centimetres x 2 columns in size; and

- (d) on or before 4 December 1996 the Company will 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) on or before 28 February 1997, the Company will 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 where those

persons have not been identified to the Commission in accordance with paragraph (d) hereof; and

- (f) from 20 November 1996 and until 31 January 1997, the Company will provide an Australia wide toll free telephone access facility to allow consumers to contact the company to arrange for refunds and cash back payments in respect of the product purchased on or before 31 December 1996; and
- (g) within 60 days hereof the Company will develop and institute a three year Trade Practices Act compliance program, in a form approved by the Commission, which approval shall not be unreasonably withheld, for the company with 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 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;
- (h) The Company further undertakes that:
  - (i) on or before 31 December 1996, and
  - (ii) immediately upon the termination of the first year of the compliance training program,

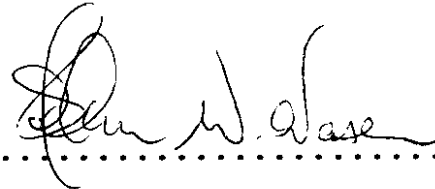
it will advise the Australian Competition and Consumer Commission in writing as to all actions it has taken and what procedures it has implemented to comply with this undertaking, and the results thereof.

3. ACKNOWLEDGEMENTS

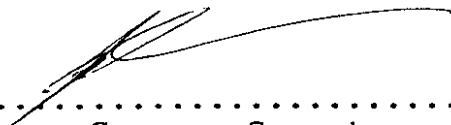
- 3.1 The Company acknowledges that the Australian Competition and Consumer Commission will make this undertaking available for public inspection.
- 3.2 The Company acknowledges that the Australian Competition and Consumer Commission will from time to time publicly refer to this undertaking.
- 3.3 The 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

SIGNED FOR AND ON BEHALF OF )  
 CARTER-WALLACE AUSTRALIA PTY )  
 LTD by MR ALAN NASH )  
 Managing Director in the )  
 presence of: )



.....



.....  
 Company Secretary

This *Thirteenth* day of *December* 1996

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



.....  
 CHAIRMAN

This *19* day of *June* 1996

# SCHEDULE A

Carter-Wallace (Australia) Pty Ltd trading as Aapri

## \$2 CASH BACK OFFER

### AAPRI FOAMING WASH GEL

Aapri wishes to advise you that by advertising from 24th November until 29 December 1996 Aapri will apologise to consumers misled by its \$2 cash back offer which applied to Aapri Foaming Wash Gel.

Aapri acknowledges that the promotional material with the product did not adequately disclose that the \$2 cash back offer was limited to one claim per household.

As a result of an approach by the Australian Competition and Consumer Commission Aapri has undertaken to honour all claims for the \$2 cash back made by consumers who claim in writing asserting when and where the product was purchased and the quantity of the product purchased together with some reasonable form of proof of purchase. The limitation of one claim per household does not apply to the promotion.

Any person wishing to make a claim should send their claim to:

Aapri Foaming Wash Gel Cash Back Offer  
PO Box 705  
NORTHBRIDGE NSW 2063

Telephone enquiries to: 1 800 222 099

Aapri would appreciate you providing this information to any person who makes enquiries in relation to the cash back offer applying to the product purchased at your store.

(SENT TO RETAIL H.Q.S 20/11/96  
BEFORE FINAL AGREEMENT WITH ACCC.)

## **SCHEDULE B**

### **\$2 CASH BACK OFFER**

#### **AAPRI FOAMING WASH GEL**

Carter Wallace (Australia) Pty Ltd apologises to consumers misled by Aapri's \$2 cash back offer which applied to Aapri's Foaming Wash Gel.

Carter Wallace (Australia) Pty Ltd acknowledges that the promotional material with the product did not adequately disclose that the \$2 cash back offer was limited to one claim per household.

As a result of an approach by the Australian Competition and Consumer Commission Carter Wallace (Australia) Pty Ltd has undertaken to honour all claims for the \$2 cash back made by consumers who claim in writing asserting when and where the product was purchased and the quantity of the product purchased together with some reasonable form of proof of purchase. The limitation of one claim per household does not apply to this promotion.

Send your claim to:

Aapri Foaming Wash Gel Cash Back Offer  
PO Box 705  
NORTH BRIDGE NSW 2063

Telephone enquiries to: 1800 222 099