



UNDERTAKING
Australian Consumer Law (SA)
Section 218

Undertaking to the Commissioner for Consumer Affairs given for the purposes of Section 218 of the *Australian Consumer Law (SA)* by:

Waimea Pty Ltd, ACN 008 091 870, trading as Cheap as Chips

1. PERSONS GIVING THIS UNDERTAKING

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs by Waimea Pty Ltd, in the State of South Australia for the purposes of section 218 of the *Australian Consumer Law (SA)* ('the ACL'), which is adopted by the *Fair Trading Act 1987*.

2. BACKGROUND

- 2.1. Shane Radbone, Richard Facioni, Neil Plummer, Thomas Krulis and Gary Levin are current directors of the company Waimea Pty Ltd, trading as Cheap as Chips, ACN 008 091 870.
- 2.2. Shane Radbone, Richard Facioni, Neil Plummer, Thomas Krulis and Gary Levin are also directors of Palcove Pty Ltd, previously trading as Cheap as Chips, ACN 055 118 404.
- 2.3. Cheap as Chips supply a variety of discount goods, including a variety of cosmetic products.
- 2.4. Prior to the conduct of concern Consumer and Business Services ('CBS') had identified a number of potential breaches that had been dealt with administratively by way of warning and expiation and through removal of the relevant products.

3. CONDUCT OF CONCERN

- 3.1. On 21 April 2016, Compliance and Investigations Officers from CBS attended Cheap as Chips located at Shop 5, 130 Valetta Road, Fulham Gardens, South Australia, where they inspected 17 cosmetic products available for supply that were not labelled with their ingredients, namely:
- 3.1.1. Rimmel London Stay Glossy lip gloss, item code AA12107;
 - 3.1.2. Loreal Hip Color presso lip gloss, item code AA10098;
 - 3.1.3. Maybelline Shine Sensational lip gloss, item code AA10099;
 - 3.1.4. Revlon Just Bitten Lip Stain + Balm, item code AA10097;
 - 3.1.5. Rimmel London Spark it Up eye liner, item code AA12107;
 - 3.1.6. Maybelline Cool Effect eye shadow/liner, item code AA10099;
 - 3.1.7. Revlon Photoready Kajal eye liner + brightener, no barcode or item code attached;
 - 3.1.8. Loreal Hip Kohl Eyeliner, item code AA10098;
 - 3.1.9. Loreal Wear Infinite eyeshadow, item code AA10098;
 - 3.1.10. BMC Accessories Professional Hair Chalk – 6 colours, no item code or barcode on product;

- 3.1.11. Rimmel London Glam Eyes Quad Eye Shadow, item code AA12935;
 - 3.1.12. Rimmel London Glam Eyes HD Quad Eye Shadow, item code AA13156;
 - 3.1.13. Allora Lip Gloss, item code AA11976;
 - 3.1.14. BYS Bubble Balm, item code AA13042;
 - 3.1.15. Loreal nail polish, item code AA10098;
 - 3.1.16. Rimmel London lasting finish pro nail polish, item code AA12712; and
 - 3.1.17. Maybelline Color Show nail polish, item code AA12711.
- 3.2. The products listed in 3.1.1-3.1.17 are classified as cosmetic products as defined in the applicable mandatory information standard for cosmetic products, *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*.
- 3.3. The products listed in 3.1.1-3.1.17 do not show their ingredients as is required in Section 5 of the applicable mandatory information standard for cosmetic products.

4. RELEVANT PROVISIONS

- 4.1. Section 106 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, consumer goods of a particular kind if a safety standard for goods of that kind is in force, and the goods do not comply with the standard.
- 4.2. Section 118 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, consumer goods of a particular kind if an interim ban on consumer goods of that kind is in force in the place where the supply occurs, or a permanent ban on consumer goods of that kind is in force.
- 4.3. Section 136 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, goods of a particular kind if an information standard for goods of that kind is in force, and the person has not complied with that standard.
- 4.4. The *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* is the applicable mandatory information standard for cosmetic products.
- 4.5. Section 3 of the mandatory information standard states that cosmetic products are substances or preparations intended for placement in contact with any external part of the body for the purpose of altering the odours of the body, changing the appearance of the body, cleansing the body, maintaining the body in good condition, perfuming the body, and protecting the body.
- 4.6. Section 5 of the mandatory information standard states that the ingredients in a cosmetic product must be listed on the container or, if the product is not packed in a container, on the product. If the product's size, shape or nature prevents the ingredients from being listed on the product or its container, the ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients in the product.
- 4.7. Section 6 of the mandatory information standard states that the list of ingredients must be prominently shown, clearly legible, and in English.
- 4.8. The products purchased from Cheap as Chips and listed in 3.1.1-3.1.17, are captured by the definition of a cosmetic product. The ingredients were not displayed on the products, on their packaging or in any other way visible to CBS Officers.

5. COMMENCEMENT OF UNDERTAKING

- 5.1. This Undertaking comes into effect when:
- 5.1.1. the Undertaking is executed by Waimea Pty Ltd; and
 - 5.1.2. the Commissioner for Consumer Affairs accepts the Undertaking so executed.

6. UNDERTAKING BY WAIMEA PTY LTD FOR THE PURPOSES OF SECTION 218 OF THE ACL

- 6.1. In response to the concerns raised by CBS on behalf of the Commissioner for Consumer Affairs, Waimea Pty Ltd hereby provides an undertaking to the Commissioner that:
- 6.1.1. Waimea Pty Ltd will not breach the product safety provisions contained within the ACL.
 - 6.1.2. Waimea Pty Ltd will not supply goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.
 - 6.1.3. Waimea Pty Ltd will not supply goods that are covered by an interim or permanent ban in accordance with the requirements of the ACL.
 - 6.1.4. Waimea Pty Ltd will implement a written product safety compliance program to ensure that:
 - 6.1.4.1. new stock does not get offered or otherwise advertised for sale until Waimea Pty Ltd is satisfied that it is not in breach of safety standards, information standards, or bans under the ACL;
 - 6.1.4.2. current stock is regularly audited to ensure that it is not in breach of safety standards, information standards, or bans under the ACL;
 - 6.1.4.3. Waimea Pty Ltd will nominate a person responsible for the implementation and maintenance of the product safety compliance program;
 - 6.1.4.4. Waimea Pty Ltd will implement and conduct training for relevant staff within four months of signing this Undertaking, and then annually, to ensure that the product safety compliance program is understood and applied; and
 - 6.1.4.5. Waimea Pty Ltd will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 6.1.4.4 and Waimea Pty Ltd will provide this to CBS within one month after the initial training has been completed.

7. ACKNOWLEDGEMENTS

Waimea Pty Ltd acknowledges that:

- 7.1. CBS will make this undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website;
- 7.2. The Australian Competition and Consumer Commission ('ACCC') may make this undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety Australia website;
- 7.3. CBS may, from time to time, make public reference to the undertaking including in news media statements and in CBS publications;
- 7.4. This undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct; and

7.5. This undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

EXECUTED BY Waimea Pty Ltd



Signature (Director)

Date:

13/4/17

Print name:

MR. SHANE RADBONE

Position:

CEO



Signature of Witness

Name:

DESIREE VALLADARES



Signature (Director or Secretary)

Date:

13/4/17

Print name:

TOM DAVIES

Position:

CFO



Signature of Witness

Name:

MACKENZIE JARVIS

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to Section 218 of the Australian Consumer Law (SA).



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Commissioner for Consumer Affairs (SA)

Date:

4 May 2017