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**Undertakings to the Commerce Commission under
s 46A of the Fair Trading Act 1986**

Reckitt Benckiser (New Zealand) Limited

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Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

1 Persons giving undertakings

- 1.1 These undertakings are given to the Commerce Commission (Commission) for the purposes of s 46A of the Fair Trading Act 1986 (FTA) by Reckitt Benckiser (New Zealand) Limited (RBL).

2 Background

- 2.1 RBL markets and sells the current Nurofen specific pain range branded products comprising:
- (a) Nurofen Migraine Pain ibuprofen lysine 342 mg blister pack;
 - (b) Nurofen Period Pain ibuprofen lysine 342mg tablet blister pack; and
 - (c) Nurofen Back Pain ibuprofen lysine 342 mg tablet blister pack;
- (together Nurofen Specific Pain Range) in the form of packaging comprising Annexures A, B and C to these undertakings (Nurofen Specific Pain Range packaging).
- 2.2 The Commission is currently investigating whether in doing so RBL has engaged in misleading or deceptive conduct in contravention of the FTA.
- 2.3 The Australian Competition and Consumer Commission brought proceedings against Reckitt Benckiser (Australia) Pty Ltd in the Australian Federal Court for similar conduct. On 11 December 2015 those proceedings were resolved on terms similar to those now reflected in these Undertakings.

3 Purpose of the undertakings

- 3.1 These undertakings are given by RBL in order to satisfy the Commission that there is no need to seek urgent injunctive relief pending the resolution of the Commission's investigation.

4 Undertakings

- 4.1 RBL undertakes to the Commission that:
- 4.1.1 It will not, whether by itself, its servants or agents, sell, market, advertise or promote any product comprising the Nurofen Specific Pain Range:
- (a) in the Nurofen Specific Pain Range Packaging; or
 - (b) in packaging making any representations to the effect that:
 - (i) any product in the Nurofen Specific Pain Range is specifically formulated to treat the particular type of pain specified on the

packaging relevant to that product and not other types of pain;
and/or

- (ii) any product in the Nurofen Specific Pain Range solely or specifically treats the particular type of pain specified on the packaging relevant to that product and not other types of pain.

4.1.2 It will by 14 January 2016 cease or use its best endeavours to procure the cessation of any further shipment, distribution and sale of the Nurofen Specific Pain Range packaged in the Nurofen Specific Pain Range packaging.

4.1.3 It will by 23 March 2016 procure, or use its best endeavours to procure, the removal of all Nurofen Specific Pain range products packaged in the Nurofen Specific Pain Range Packaging from display and sale in all retail outlets to which RBL supplies these products for sale.

5 Labelling

5.1 RBL has provided the Commission with revised packaging comprising a sticker that it proposes to place on each of the Nurofen Specific Pain range products over the Nurofen Specific Pain Range packaging. For the purposes and duration of these Undertakings the Commission accepts that the sale, supply or distribution of Nurofen Specific Pain range products bearing the sticker will not breach these Undertakings

6 Effect of the undertakings

6.1 The undertakings are:

- (a) Court enforceable undertakings in terms of s 46A of the FTA; and
- (b) made without admission of liability by RBL as to the conduct set out at paragraph 2.

7 Commencement of undertakings

7.1 The undertakings come into effect when:

- (a) the undertakings are executed by RBL; and
- (b) the Commission confirms its acceptance of the undertakings.

8 Duration of the undertakings

8.1 These undertaking(s) will continue to have effect until the earlier of:

- (a) 31 December 2016; or
- (b) the date upon which a court (or subsequent appeal court in the event of appeal) determines the conduct described in paragraph 2 above is not in breach of the relevant obligations in the FTA; or

- (c) the date upon which the Commission agrees to discharge the Undertaking Parties from the Undertakings.

9 Compliance with the undertakings

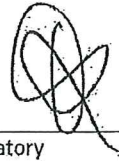
- 9.1 If RBL becomes aware of a breach of these undertakings, whether advertent or inadvertent, they will notify the Commission with seven days of becoming aware, giving full particulars of the breach.
- 9.2 If requested to do so by the Commission, RBL will engage at their own cost KPMG (or another reputable third party approved by the Commission) (Reviewer) to conduct a review of its compliance with the undertakings as directed by the Commission (Compliance Audit), and to report its findings to the Commission.
- 9.3 RBL will comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.
- 9.4 For the avoidance of doubt, nothing in paragraphs 9.1 to 9.4 above prevents the Commission from directly seeking any information from RBL at any time during the course of the criminal and/or civil proceedings for the purpose of checking compliance with the undertakings.

10 Miscellaneous

- 10.1 No amendment to the undertakings will be effective unless it is in writing, executed by RBL and signed as accepted by the Commission.
- 10.2 These Undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by the Undertaking Parties or the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 10.3 RBL acknowledges that:
- (a) The Commission may make the undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the undertakings including in news media statements and in the Commission's publications.
 - (c) Nothing in the undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.

Execution


Signed by and on behalf of
Reckitt Benckiser (New Zealand) Limited



Authorised signatory

M. REITSMAN

Name

In the presence of: 

Witness Name: C.C. J.

Witness Address: []

Witness Occupation: Consumer and Shopper Marketing Manager

Date: 27 December 2015

Acceptance

Accepted by the Commerce Commission by



Authorised signatory

MARK NEWMAN BERRY

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Date:

ANNEXURE A



ANNEXURE C

