

Schedule A

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

New Zealand Wild Deer Velvet Limited

and

Hee Ja Yoo

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

1 Purpose of undertakings

- 1.1 These court-enforceable undertakings are provided by NZWDVL and Mrs Yoo to the Commerce Commission, in accordance with the Settlement Agreement under which these undertakings comprise Schedule A.
- 1.2 The undertakings are provided in order to give the Commerce Commission assurances as to the future conduct of the persons, and thereby to resolve the Commission's investigation into NZWDVL and Mrs Yoo without the Commission commencing civil or criminal proceedings in relation to the conduct.

2 Persons giving undertakings

- 2.1 These undertakings are given to the Commerce Commission (**Commission**) under section 46A of the Fair Trading Act 1986 (**FTA**) by:
 - (a) New Zealand Wild Deer Velvet Limited, a company incorporated in New Zealand having its registered office at 120 Riri Street, Rotorua (**NZWDVL**); and
 - (b) Hee Ja Yoo, also known as Hee Ja Kong, of 34 Stanley Drive, Lynmore, Rotorua, the sole director and shareholder of NZWDVL (**Mrs Yoo**)

(together, the **undertaking parties**.)

3 Background

- 3.1 The Commission has investigated allegations that the undertaking parties contravened the Fair Trading Act 1986 by making false and misleading representations in relation to the NZWDVL's company affiliations, the nature, contents, characteristics, price and benefits of its deer products and qualifications and the affiliations of its employees.
- 3.2 The Commission's investigation established that NZWDVL made false and/or misleading representations that included:
 - (a) External signage representing that the premises were 'MAF New Zealand Government Approved Premises', when in fact NZWDVL's premises were not MPI or MAF approved.
 - (b) Internal signage representing that the premises were a 'Restricted Duty Free Area', when in fact the premises were not a Duty Free area as approved by NZ Customs.
 - (c) Representing that an employee, Mr Barrow, was 'representing the Ministry of Agriculture and Forestry in New Zealand, MAF' at the premises, when in fact Mr Barrow was not an employee of MPI, nor of MAF, and he did not represent MAF on the premises.

- (d) An employee, Mr Joo, representing that 'the deer velvet capsules being sold on the premises were powdered tip velvet only', when in fact the deer velvet being sold in the powdered form by Mr Joo at the time was not only powdered tip.
- (e) An employee, Mr Joo, representing that the 'deer velvet contains an immune hormone that helps prevent colds and flu and cures atopic dermatitis', when in fact there is no evidence to substantiate claims that 'deer velvet contains an immune hormone that helps prevent colds and flu and cures atopic dermatitis'.
- (f) An employee, Mr Joo, representing that the deer velvet diabetes capsules being sold on the premises 'would allow diabetics to replace insulin injections', when in fact this is false and replacing insulin injections with deer velvet could have had fatal consequences for a diabetic.
- (g) An employee, Mr Joo, when greeting shopping tourists and conducting sales at NZWDVL, wore a name badge that stated that he was a Doctor and that he had been approved by MAF, when in fact:
 - (i) Mr Joo has no qualifications to represent that he is a doctor in any capacity - medical or otherwise; and
 - (ii) Mr Joo had not been approved by MAF or MPI.

3.3 The Commission investigation also established that Mrs Yoo had knowledge of, and assisted, NZWDVL's conduct and representations.

4 Undertakings

4.1 NZWDVL undertakes to the Commission that:

- (a) NZWDVL is not currently trading.
- (b) If NZWDVL does resume trade, it will notify the Commission in writing of its intention not less than 4 weeks prior to doing so.
- (c) It will, within 4 weeks of commencing trade, prepare and provide to the Commission a written copy of a proposed Compliance Programme that includes:
 - (i) training on the provisions of the FTA, including sections 10, 12A and 13;
 - (ii) reasonable measures to prevent representatives and employees of NZWDVL from contravening the provisions of the FTA, including sections 10, 12A and 13.
- (d) It will, within 8 weeks of commencing trade, implement the proposed Compliance Programme, together with any reasonable modifications proposed by the Commission.
- (e) If NZWDVL recommences trade in the future, it will not make any representation in relation to:

- (A) product content; or
- (B) the health properties or benefits of products sold or supplied;
or
- (C) any qualifications held by any representative of NZWDVL; or
- (D) any official or Governmental association with, approval by or
affiliation to the company or its products being offered for sale
or supply,

that is:

- (i) false or misleading; or
- (ii) made without having reasonable grounds for making the
representation.

4.2 Mrs Yoo undertakes to the Commission that:

- (a) She is not currently a director of, or involved in the operation and/or
management of, any company or trading entity other than NZWDVL, that is
involved with the wholesale or retail supply of goods.
- (b) She will notify the Commission in writing within 4 weeks of her becoming a
director of, or involved in the operation and/or management of, any company
or trading entity other than NZWDVL, that is involved with the wholesale or
retail supply of goods.
- (c) She will, within 4 weeks of becoming involved in the supply of goods in any of
the ways set out in 4.2(b), ensure that the trading entity prepares and
provides to the Commission a written copy of a proposed Compliance
Programme that includes:
 - (i) training on the provisions of the FTA, including sections 10, 12A and
13;
 - (ii) reasonable measures to prevent representatives and employees of the
entity from contravening the provisions of the FTA, including sections
10, 12A and 13.
- (d) She will, within 8 weeks of such entity referred to in 4.2(b) commencing trade
or her getting involved therein, ensure implementation of the proposed
Compliance Programme, together with any reasonable modifications proposed
by the Commission.
- (e) She will not assist any company or trading entity – including NZWDVL – to
make any representation in relation to:
 - (A) product content; or
 - (B) the health properties or benefits of products sold or supplied;
or
 - (C) any qualifications held by any representative of the entity; or

- (D) any official or Governmental association with, approval by or affiliation to the entity or its products being offered for sale or supply,

that is:

- (iii) false or misleading; or
- (iv) made without having reasonable grounds for making the representation.

5 Commencement and effect of the undertakings

- 5.1 The undertakings are court-enforceable undertakings in terms of s 46A of the FTA.
- 5.2 The undertakings come into effect when all parties have signed the Settlement Agreement that contains these undertakings.

6 Duration of the undertakings

- 6.1 These undertakings will continue to have effect until:
 - (a) in the case of Mrs Yoo, five (5) years after the date on which the Settlement Agreement is signed; and
 - (b) in the case of NZWDVL, ten years after the date on which the Settlement Agreement is signed; or
 - (c) the parties otherwise agree.

7 Compliance with the undertakings

- 7.1 If either of the undertaking parties becomes aware of a breach of these undertakings, whether advertent or inadvertent, they must notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 7.2 If requested to do so by the Commission, the undertaking parties must engage at their own cost KPMG (or another reputable third party approved by the Commission) (**Reviewer**) to conduct a review of their compliance with the undertakings as directed by the Commission (**Compliance Audit**), and to report its findings to the Commission. The undertaking parties will comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.
- 7.3 For the avoidance of doubt, nothing in paragraphs 7.1 to 7.2 above prevents the Commission from:
 - (a) directly seeking any information from the undertaking parties for the purpose of checking compliance with the undertakings; or
 - (b) applying to the High Court under s 46B of the FTA.

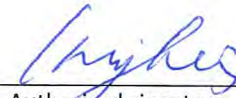
8 **Miscellaneous**

- 8.1 No amendment to the undertakings will be effective unless it is in writing and signed by the undertaking parties and the Commission.

- 8.2 The undertaking parties acknowledge that the Commission may make the undertakings publicly available including on the Commission's website.

Execution


Signed by and on behalf of **New Zealand
Wild Deer Velvet Limited**



Authorised signatory

Hee-Ja Yoo

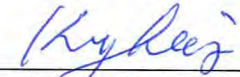
Name

In the presence of: 


Witness Name: William Lawson
Witness Address: Rotorua
Witness Occupation: Solicitor

Date:

Signed by **Hee Ja Yoo**



Hee Ja Yoo

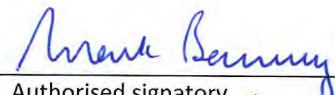
In the presence of: 

Witness Name: William Lawson
Witness Address: Rotorua
Witness Occupation: Solicitor

Date:

Acceptance

Accepted by the **Commerce Commission** by



Authorised signatory

MARK NEWMAN BERRY

Name

In the presence of: 

Witness Name: PAMELA CAMPBELL
Witness Address: 25 KAITANGATA CRESCENT, LOWER HUTT
Witness Occupation: EXECUTIVE ASSISTANT

Date: 1 October 2015