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20 June 2016

The Green People Company Limited
Pondtail Farm
Coolham Road
West Grinstead
West Sussex RH13 8LN
United Kingdom

Also by email to: []@greenpeople.co.uk

Attention: [], Operations Manager

Dear [],

Warning and compliance advice

1. The New Zealand Commerce Commission (Commission) has been investigating the conduct of The Green People Company Limited (Green People) under the New Zealand Fair Trading Act 1986 (the Act).¹ We have now completed our investigation and are writing to you to alert you to our concerns.

Summary

2. After carefully weighing up the factors set out in our Enforcement Response Guidelines,² we have decided to issue this warning letter and provide advice to assist Green People to meet its statutory obligations in New Zealand. We will not be taking any further enforcement action against Green People in relation to the issues identified in this letter at this time.
3. The Commission is issuing a warning to Green People as it considers that Green People is likely to have breached:
 - 3.1 section 13(e) as the representation on the label that the Green People Organic Children Sun Lotion Medium 25SPF (the Sun Lotion) is “water repellent” implies a higher standard of performance than potential resistance to displacement by water splashes; and

¹ All section references are to sections of the Act, unless otherwise stated.

² Available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

- 3.2 section 12A as simple observation of skin that had been wetted is unlikely to constitute reasonable grounds for making the representation on the label that the Sun Lotion is “water repellent”.
4. The Commission is issuing compliance advice to Green People as it has concerns that Green People is at risk of having breached:
 - 4.1 section 12A as 2008 test results were unlikely to constitute reasonable grounds for making the representation on the label that the Sun Lotion provides “broad spectrum UVA/UVB protection” after Green People was in receipt of contradictory 2013 test results from []; and
 - 4.2 section 13(a) as the “FAIRLY TRADED” icon on the label suggests that all ingredients in the Sun Lotion are fairly traded when in fact only two of the 19 ingredients are fairly traded.
5. If any of this behaviour is continuing in New Zealand at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Act.

The investigation

6. At the relevant time, a range of organic children’s sunscreens produced by Green People were sold in New Zealand by an exclusive distributor. The products were marketed towards people who were concerned about buying organic, fairly traded products and wanted to protect children from the harmful effects of the sun.
7. The Commission received a complaint alleging that some statements made in the promotion of one product in this range, the Sun Lotion, could not be substantiated.
8. The Commission’s investigation focussed on representations made on the label that the Sun Lotion:
 - 8.1 is “[w]ater repellent”;
 - 8.2 provides “broad spectrum UVA/UVB protection”; and
 - 8.3 is “fairly traded”.
9. A copy of the front label of the Sun lotion is attached in **Attachment A** and a copy of the Back label is attached in **Attachment B**.
10. During the investigation, the Commission considered information provided by Green People in response to the Commission’s requests for information.
11. As a result of the Commission’s investigation the exclusive distributor of the Sun Lotion at the relevant time has ceased importing the Sun Lotion into New Zealand and has destroyed all remaining stock on hand.

12. We acknowledge that the Sun Lotion has been discontinued, and that the last batch was made in June 2014.

Warning regarding likely breaches of the Act

13. Paragraphs 16 to 24 of this letter constitute a formal warning. The Commission considers that Green People's conduct with regard to the issues discussed is likely to have breached the Act.
14. In the circumstances of this case, we have decided to conclude our investigation in relation to the issues discussed at paragraphs 16 to 24 of this letter by issuing you with this warning. We will not be taking any additional action in relation to those matters.
15. While we will not be taking any further action against Green People at this time, we will take this warning into account if this conduct continues or if Green People engages in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Green People.

Representation that the Sun Lotion is "water repellent"

Section 13(e): False or misleading representation that goods have any performance characteristics

16. Section 13(e) states that no person shall, in trade, in connection with the supply or possible supply of goods or with the promotion by any means of the supply of goods, make a misleading representation that goods have any performance characteristics.
17. Green People makes the representation on the back label that the Sun Lotion is "[w]ater repellent". The back label of the Sun Lotion is reproduced in **Attachment B**.
18. Green People is likely to have breached section 13(e) as the headline representation that the Sun Lotion is "water repellent" is likely to be misleading with respect to the performance characteristics of the Sun Lotion.
19. The term "water repellent" suggests that the Sun Lotion is more than simply "water-resistant", the term defined by the test in the Australia/New Zealand Standard 2604:2012 Sunscreen Products – Evaluation and classification (Standard)³ and most commonly used in New Zealand in relation to sunscreen. The higher performance standard implied by "water repellent" is at odds with the actual performance of the Sun Lotion in water, i.e. "mildly water repellent and *should* resist being displaced by water splashes".

Section 12A: Unsubstantiated representations

20. Section 12A states that a person must not, in trade, make an unsubstantiated representation. A representation is unsubstantiated if the person making the

³ While the Standard is not mandatory in New Zealand it is the most commonly used standard in New Zealand in relation to sunscreen.

representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

21. When assessing whether a person had reasonable grounds for a representation, a Court must have regard to all of the circumstances, including:⁴
 - 21.1 the nature of the goods in respect of which the representation was made;
 - 21.2 the nature of the representation;
 - 21.3 any research steps or other steps taken by or on behalf of the person before the person made the representation;
 - 21.4 the nature and source of any information that the person relied on to make the representation;
 - 21.5 the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements;
 - 21.6 the actual or potential effects of the representation on any person.
22. In making the representation that the Sun Lotion is “water repellent”, Green People relied on a simple observation of skin that had been wetted after application of the Sun Lotion. Green People relied on this simple observation as the term “water repellent” is not defined in European Cosmetics Legislation and therefore there are no tests to specifically measure water repellence.
23. In the Commission’s view, Green People is likely to have breached section 12A as it is unlikely to have had reasonable grounds for making the representation that the Sun Lotion is “water repellent” and provides an adequate level of resistance to displacement by water.
24. The relevant representation is about a key quality of a healthcare product consumers rely on to protect children’s vulnerable skin from the damaging effects of the sun. Such a claim should be supported by a high level of substantiation in the form of credible and reliable scientific evidence, including rigorous product testing. Simple observation of skin that has been wetted after application of the Sun Lotion is unlikely to be sufficient.

Compliance advice

25. In addition to the issues discussed above, the investigation has also identified issues which may put Green People at risk of breaching the Act in other respects. The following section of this letter outlines our concerns in this regard and provides advice to assist Green People to comply with its statutory obligations in the future.

⁴ Section 12B.

Representation that the Sun Lotion provides “broad spectrum UVA/UVB protection”

Section 12A: Unsubstantiated representations

26. Section 12A is discussed above at paragraphs 20 and 21.
27. Green People makes the representation on the back label that the Sun Lotion provides “broad spectrum UVA/UVB protection”. The back label of the Sun Lotion is reproduced in **Attachment B**.
28. Green People has said that it relied on test results from 2008 when making the representation. However, a test carried out on behalf of Green People by [] in November 2013 indicated that the Sun Lotion did not comply with the broad spectrum test in the Standard.
29. Green People has noted that the 2013 [] results show that that the Sun Lotion provided SPF equivalence for UVA protection equal to SPF6, and that means that it filtered out 80% of UVA rays in the test. Green People believe that a sun lotion that filters out 96% of UVB and 80% of UVA rays does justify the claim that it offers broad-spectrum protection.
30. As noted at paragraph 24, we would expect a representation about a key quality of a healthcare product like the Sun Lotion to be supported by a high level of substantiation.
31. It may be that Green People had reasonable grounds to make the representation up until the point that it received the 2013 [] results.
32. The Commission is concerned that once Green People was in possession of the 2013 [] test results, it was on notice that a reputable testing laboratory had tested the Sun Lotion and found it did not comply with the broad spectrum test in the Standard. We are concerned that from that point, it may no longer have been reasonable for Green People to rely on the older 2008 test results when making the representation.
33. Furthermore, the 2013 test results were unlikely to constitute reasonable grounds for the representation. We are concerned that test results that confirm UVA protection equal to SPF6 may not be reasonable grounds for a representation that an SPF25 Sun Lotion provides “broad spectrum UVA/UVB protection”.

Representation that the Sun Lotion is “FAIRLY TRADED”

Section 13(a): False or misleading representation that goods are of a particular kind or quality

34. Section 13(a) states that no person shall, in trade, in connection with the supply or possible supply of goods or with the promotion by any means of the supply of goods, make a misleading representation that goods are of a particular kind or quality.
35. A “FAIRLY TRADED” icon (Icon) appears in the endorsements panel at the bottom of the back label of the Sun Lotion. A triangular icon is used to denote the two out of 19

ingredients in the ingredients list that are fairly traded. The ingredients list appears in the middle of the back label of the Sun Lotion. The back label of the Sun Lotion is reproduced in **Attachment B**.

36. Green People consider that the Icon is a representation that the Sun Lotion contains fairly traded ingredients, not that the Sun Lotion is fairly traded.
37. In our view the Icon is a representation that the Sun Lotion is fairly traded, and constitutes a representation by implication that all of the ingredients in the Sun Lotion are fairly traded. .
38. We are concerned that this representation risks breaching section 13(a) as only two of the 19 ingredients in the Sun Lotion are fairly traded. While the true position is made clear in the ingredients list, in our view this is not sufficient to cure the impression created by the Icon. This is because the Icon is the dominant message, the qualification in the ingredients list is not sufficiently prominent or linked to the Icon, and there is a glaring disparity between the Icon and the qualification to the ingredients list.
39. Green People should take care to ensure that the representations about the fairly traded quality of the Sun Lotion are accurate and not misleading.

Penalties for breaching the Act

40. Only a Court can decide if there has actually been a breach of the Act and only a Court can impose penalties where it finds the law has been broken.
41. From 17 June 2014, parties who breach the Act can be fined up to \$600,000 per offence in the case of a company and \$200,000 for individuals. The penalties that apply to conduct that occurred prior to 17 June 2014 are lower: up to \$200,000 per offence in the case of a company and \$60,000 for individuals.
42. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the Courts.

The Commission's role

43. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Further information

44. This letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.
45. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our

website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.

46. You can also view the Act and other New Zealand legislation at www.legislation.co.nz.
47. Thank you for your assistance with this investigation. Please contact [] on [] or by email at [_____@comcom.govt.nz] if you have any questions about this letter.

Yours sincerely

[]
Consumer Manager - Competition Branch

Attachment A: Front label of the Sun Lotion



