

WESTERN AUSTRALIA

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

IGEA LIFE SCIENCES PTY LTD (ACN 125 930 878)

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

- A. **IGEA LIFE SCIENCES PTY LTD (Company)** promotes and supplies, in trade or commerce, goods and services in the form of a weight-loss product known as 'Bodytrim' (**Product**);
- B. The Product was promoted in *The West Australian* newspaper, *Super Food Ideas* and *Women's Health and Fitness* magazine;
- C. The Commissioner for Consumer Protection (**Commissioner**) considers that there is no basis to represent that the Product:
 - C.1 does not require a person to diet and/or allows a person to continue to eat the same foods or the same quantity of foods that the person did prior to using the Product whilst losing weight;
 - C.2 provides 'permanent' and/or 'sustained' weight loss;
 - C.3 involves a scientific process or a process which is supported by a special body of scientific evidence or material and which involves a change or alteration in body chemistry to promote or facilitate weight loss; and
 - C.4 had 350,000 or 400,000 Australian successes;
- D. This Enforceable Undertaking is accepted by the Commissioner under section 218 of the *Australian Consumer Law (WA)* (**ACL**) and is enforceable under that section by a court upon the Commissioner's application;
- E. For the purposes of this Enforceable Undertaking:
 - (a) 'advertisement' means any publication on any medium that promotes, or is intended to promote, the supply of the Product including, but not limited to, advertisements, infomercials, advertorials, testimonials, internet websites, internet blogs and interviews;
 - (b) 'consumer' has the same meaning as it does under the ACL and the Fair Trading Act 2010 (WA);

- (c) 'supply' means the supply of goods and/services in the form of the Product; and
- (d) any reference to the Product includes any goods or services sold in addition to or conjunction with the Product;
- F. This Enforceable Undertaking does not prevent the Commissioner from taking any action in respect of the matters the subject of this Enforceable Undertaking;
- G. The rights of consumers are not affected by this Enforceable Undertaking; and
- H. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKINGS

IGEA LIFE SCIENCES PTY LTD, upon this Enforceable Undertaking being accepted by the Commissioner, **UNDERTAKES**, pursuant to section 218 of the *Australian Consumer Law (WA)*, that:

Corrective Advertising

1. Within 28 days of the undertaking being accepted, the Company will publish a full page corrective advertisement containing the text in **Annexure A** in the section of 'early general news' of *The Weekend West* newspaper.

Letters to Consumers

2. Within 28 days of the undertaking being accepted, the Company will send to all known Western Australian purchasers of the Product (who purchased the Product between 1 February 2011 and 30 April 2012) the letter in **Annexure B**.

Refunds

3. Where the Company has supplied the Product to any consumer in Western Australia during the period from 1 February 2011 to 30 April 2012, such consumer may (within 45 days of the later of the publication at paragraph 1 above, the receipt of the letter at paragraph 2, or date on which this Undertaking is accepted) request a refund of the amount paid for the Product where such consumer establishes to the Company's reasonable satisfaction that the consumer has been misled by the advertisements or promotional material published in relation to the Product.
- 3A. In the case of any refusal to refund between the Company and a consumer as to whether the consumer has been misled, the Company must refer the dispute to the Commissioner whose decision shall be final.
4. Subject to clause 3 and 3A, the Company shall, within 14 days of receiving the request, refund to the consumer the amount paid by the customer for the Product, including any postage, handling and delivery costs paid by the consumer for or in relation to the Product.


Signed for and on behalf of:

IGEA LIFE SCIENCES PTY LTD (ACN 125 930 878)

In accordance with section 127 of the *Corporations Act 2001 (Cth)*


GAFF JOURN

Full name of Director



Signature of Director

ALEX SISIOLOS

Full name of Director/Secretary
(if required)


Signature of Director
(if required)

AND
COMMISSIONER FOR CONSUMER PROTECTION


Signature

3 September 2013
Date of Acceptance

ANNEXURE A CORRECTIVE ADVERTISING

CORRECTIVE ADVERTISING – BODYTRIM WEIGHT LOSS PROGRAM

IGEA Life Sciences Pty Ltd (IGEA) is the supplier and promoter of a weight loss program sold and marketed as 'Bodytrim'.

The Commissioner for Consumer Protection in Western Australia (**the Commissioner**) holds the concern that claims made by IGEA in connection with the advertising of 'Bodytrim' in Western Australia between 1 February 2011 and 30 April 2012 may have had the potential to mislead some consumers contrary to the *Australian Consumer Law (WA)*, in that:-

1. IGEA stated in an advertisement published in *Super Food Ideas* and *Women's Health and Fitness* magazines in November 2011 (**the advertisements**) that Bodytrim had '400,000 successes to its name' where the Commissioner considers IGEA did not have information to show weight loss by 400,000 'Bodytrim' users.
2. The Commissioner considers IGEA implied in the advertisements that there was a reliable body of scientific opinion supporting the proposition that significant weight loss can be achieved other than by energy output exceeding energy input, whereas the Commissioner does not agree that there is a conclusive body of scientific opinion that weight loss may be effected by any method other than by energy output exceeding energy input.
3. The Commissioner considers IGEA implied in the advertisements that 'Bodytrim' was able to cause significant weight loss by reason of special scientific processes such as 'resetting fat hormones', whereas the Commissioner does not agree that there is a conclusive body of scientific opinion that weight loss may be effected by any method other than by energy output exceeding energy input.
4. The Commissioner considers IGEA implied in the advertisements that users of 'Bodytrim' could lose weight without the need to 'diet', whereas the 'Bodytrim' program includes the control of caloric intake and food selection.

IGEA acknowledges the Commissioner's concern that the advertisements had the potential to mislead some consumers. IGEA is committed to ensuring it operates within the law at all times. IGEA does not believe it has misled consumers, however, it has worked closely with the Commissioner to resolve this matter and to address the concerns raised. IGEA has agreed to implement measures to ensure that its future advertising clarifies the basis on which such claims in relation to 'Bodytrim' are made.

Consumers in Western Australia who purchased 'Bodytrim' between 1 February 2011 and 30 April 2012 and believe they have been misled by IGEA's promotion of 'Bodytrim' should contact IGEA directly on [insert phone number] to discuss a resolution.

ANNEXURE B LETTER TO CONSUMERS

LETTER TO CONSUMERS – BODYTRIM WEIGHT LOSS PROGRAM

IGEA Life Sciences Pty Ltd (**IGEA**) is the supplier and promoter of a weight loss program sold and marketed as 'Bodytrim'.

The Commissioner for Consumer Protection in Western Australia (**the Commissioner**) holds the concern that claims made by IGEA in connection with the advertising of 'Bodytrim' in Western Australia between 1 February 2011 and 30 April 2012 may have had the potential to mislead some consumers contrary to the *Australian Consumer Law (WA)*, in that:-

1. IGEA stated in an advertisement published in *Super Food Ideas* and *Women's Health and Fitness* magazines in November 2011 (**the advertisements**) that Bodytrim had '400,000 successes to its name' where the Commissioner considers IGEA did not have information to show weight loss by 400,000 'Bodytrim' users.
2. The Commissioner considers IGEA implied in the advertisements that there was a reliable body of scientific opinion supporting the proposition that significant weight loss can be achieved other than by energy output exceeding energy input, whereas the Commissioner does not agree that there is a conclusive body of scientific opinion that weight loss may be effected by any method other than by energy output exceeding energy input.
3. The Commissioner considers IGEA implied in the advertisements that 'Bodytrim' was able to cause significant weight loss by reason of special scientific processes such as 'resetting fat hormones', whereas the Commissioner does not agree that there is a conclusive body of scientific opinion that weight loss may be effected by any method other than by energy output exceeding energy input.
4. The Commissioner considers IGEA implied in the advertisements that users of 'Bodytrim' could lose weight without the need to 'diet', whereas the 'Bodytrim' program includes the control of caloric intake and food selection.

IGEA acknowledges the Commissioner's concern that the advertisement had the potential to mislead some consumers. IGEA is committed to ensuring it operates within the law at all times. IGEA does not believe it has misled consumers, however, it has worked closely with the Commissioner to resolve this matter and to address the concerns raised. IGEA has agreed to implement measures to ensure that its future advertising clarifies the basis on which such claims in relation to 'Bodytrim' are made.

If you purchased 'Bodytrim' between 1 February 2011 and 30 April 2012 and believe you were misled by IGEA's promotion of 'Bodytrim' contact IGEA directly on [insert phone number] - you may be entitled to a refund subject to IGEA's reasonable satisfaction. Should you have any other concerns regarding this matter please contact the Department of Commerce Consumer Protection on 1300 30 40 54 or visit www.commerce.wa.gov.au.

Your sincerely

[Name]

[Title]