

ENFORCEABLE UNDERTAKING

Therapeutic Goods Act 1989

Section 42YL

The commitments in this undertaking are offered to the Secretary of the Australian Department of Health and Aged Care given for the purposes of section 42YL of the *Therapeutic Goods Act 1989* by

DOUGHBOT ENTERPRISES PTY LTD (ACN 617 491 568)

and

Stuart Singleton

Persons and authority

1. This undertaking is given to the Secretary of the Commonwealth Department of Health and Aged Care (**Secretary**) by Doughbot Enterprises Pty Ltd (ACN 617 491 568) of [REDACTED] (**Doughbot**) and Stuart Singleton of [REDACTED] for the purposes of section 42YL of the *Therapeutic Goods Act 1989* (Cth) (**Act**).

Background

2. The Therapeutic Goods Administration (**TGA**) is a part of the Australian Government Department of Health and Aged Care (**Department**), and is responsible for the national regulation of therapeutic goods including nicotine vaping products.
3. Doughbot is a business that advertises and sells vaping products to persons in Australia including electronically at Uniform Resource Locator (**URL**) www.wickandwireco.com.au (**the .au Website**). Stuart Singleton is the sole Director/Secretary, and sole shareholder, of Doughbot.
4. Stuart Singleton is also the sole Director/Secretary and sole shareholder of Doughbot Enterprises Limited, a New Zealand business that advertises and sells nicotine vaping products including electronically at URLs [REDACTED] (**the .com Website**) and [REDACTED] (**the .co.nz Website**).
5. Doughbot controls the .au Website.
6. Stuart Singleton controls:
 - (a) the .au Website
 - (b) the .com Website
 - (c) the .co.nz Website

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- (d) Instagram profiles including:
 - (i) [REDACTED];
 - (ii) [REDACTED]; and
 - (e) Facebook pages including:
 - (i) [REDACTED];
 - (ii) [REDACTED];
- (together with the Instagram profiles, the Social Media Pages).

7. During the period of the TGA's investigation:
- (a) the .au Website did not sell any products containing nicotine;
 - (b) the .au Website contained hyperlinks which redirected consumers to the .com Website;
 - (c) the .au Website contained statements referring to the .com Website;
 - (d) the .com Website advertised and sold nicotine vaping products, which products were despatched from New Zealand;
 - (e) the Social Media Pages contained posts which advertised the nicotine vaping products available at the .com Website.

Relevant Law

8. It is a contravention of s 42DLB(1) of the Act for a person to advertise, by any means, therapeutic goods or to cause the advertising, by any means, of therapeutic goods if, relevantly, either s 42DLB(7) or s 42DLB(9) applies to the advertisement. Section 42DLB(1) is a civil penalty provision. The corresponding offence provision is s 42DL(2) (read with s 42DL(10) and s 42DL(12)).
9. Section 42DLB(7) applies because:
- (a) the relevant advertisements refer to nicotine, or goods containing nicotine, which is a substance included in Schedule 4 of the Poisons Standard February 2022, but not in Appendix H to the Standard; and
 - (b) the reference to nicotine vaping products is not authorised or required by a government or government authority (not including a foreign government or foreign government authority).
10. Section 42DLB(9) also applies because:
- (a) the relevant advertisements refer to therapeutic goods (that is, nicotine vaping products) that are not entered in the Australian Register of Therapeutic Goods;

- (b) the nicotine vaping products are prescribed for the purposes of s 42DLB(9) by reg 7(i) of the Therapeutic Goods Regulations 1990; and
- (c) the reference to the nicotine vaping products is not authorised or required by a government or government authority (not including a foreign government or foreign government authority).

Acknowledgement of breach

- 11. Stuart Singleton and Doughbot acknowledge that the conduct described at paragraph 7 (excluding paragraph 7(a)), was likely to have contravened the Act.
- 12. Stuart Singleton and/or Doughbot have taken action to address the non-compliance with the Act including by:
 - (a) removing hyperlinks from the .au Website to the .com Website;
 - (b) removing statements referring to the .com Website from the .au Website;
 - (c) geo-blocking the .com Website and the .co.nz Website so that they are unavailable to be accessed by Australian Internet Protocol; and
 - (d) removing the contravening posts from the Social Media Pages.

(Redress Outcomes)

Period of undertaking

- 13. This undertaking comes into effect when both the following are satisfied:
 - (a) the undertaking is executed by Doughbot and Stuart Singleton; and
 - (b) the delegate of the Secretary signs the executed undertaking.
- 14. On commencement of this undertaking, Doughbot and Stuart Singleton (together referred to below as the **Undertaking Parties**) each undertake to assume the obligations set out in paragraphs 16 to 17 below.
- 15. This undertaking terminates three years following the date it comes into effect.

Undertakings

- 16. The Undertaking Parties each undertakes not to, whether themselves or through their directors, employees, servants or agents or bodies corporate under their control:
 - (a) advertise nicotine vaping products to persons in Australia in any way which is in contravention of the Act;
 - (b) aid, abet, counsel or procure, or otherwise authorise, assist or encourage in any way, any conduct by another person of a kind which the Undertaking Parties have undertaken not to engage in under paragraph 16(a) above.

17. Each Undertaking Party undertakes to:
- (a) maintain the Redress Outcomes; and
 - (b) in the event that the TGA provides reasonable evidence of advertising or supply of nicotine vaping products by the Undertaking Party on a date which is after the date of this undertaking, provide any documents and information requested by the TGA in relation to that Undertaking Party's alleged advertising or supply of nicotine vaping products to persons in Australia within 14 days (or a longer period of time allowed by the TGA) after receiving a written request from the TGA. (Note: this undertaking is in addition to the Secretary's power to request information under the Act).

Acknowledgements

18. The Undertaking Parties each acknowledge that:
- (a) this undertaking was given voluntarily;
 - (b) the Secretary may make this undertaking and information about this undertaking publicly available including by publishing it on the TGA's website;
 - (c) the Secretary and/or the Commonwealth or officers thereof may, from time to time, make public reference to this undertaking including in news media statements and in publications by the TGA or the Department including on various forms of social media;
 - (d) the Undertaking Parties will each bear all their costs of compliance with this undertaking.
19. The Undertaking Parties and the Secretary acknowledge that the date of the enforceable undertaking is the date on which it is accepted by the Secretary.

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THIS UNDERTAKING IS GIVEN BY

DOUGHBOT ENTERPRISES PTY LTD (ACN 617 491 568) in accordance with section 127(1)
of the Corporations Act 2001.



Signature of sole Director and sole
Company Secretary

STUART SINGLETON

Full name (print)

11/8/2022

Date

and

STUART SINGLETON



Signature of Stuart Singleton

11/8/2022

Date

**ACCEPTED BY A DELEGATE OF THE SECRETARY OF THE DEPARTMENT OF HEALTH
AND AGED CARE UNDER SECTION 42YL OF THE THERAPEUTIC GOODS ACT 1989**

G. Mitchell

Gillian Mitchell
First Assistant Secretary
Regulatory Practice & Support Division
Delegate of the Secretary

15/08/2022

Date

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