

DEED OF SETTLEMENT

THIS DEED IS MADE ON 10th DECEMBER 1998 IN RELATION TO
CRIMINAL PROCEEDINGS UNDER THE FAIR TRADING ACT 1986

BETWEEN

COMMERCE COMMISSION a statutory body incorporated by section 8 of the
Commerce Act 1986 (“the **Commission**”)

AND

NEW ZEALAND CONFERENCE ASSOCIATION a trust registered under the
Charitable Trust Act 1957 trading as **Sanitarium Health Food Company**
 (“Sanitarium”).

BACKGROUND

- A. Sanitarium is a manufacturer and distributor of breakfast and health type food.
One of its products is a soy drink called *So Good*.

- B. Between March and July 1997 Sanitarium had advertisements screened on TV 1, TV2 and TV3 advertising *So Good*. There were three similar versions of the *So Good* advertisement televised: a woman drinking *So Good* through a straw; a man drinking *So Good* in 3 seconds; and a man drinking *So Good* while doing a headstand. Collectively called in this Deed the “*So Good* Campaign”.
- C. One of the Commission’s mandates is to enforce the Fair Trading Act and seek compliance with it. The Commission reached the view that the *So Good* Campaign breached the Fair Trading Act. At its meeting on 8 April 1998, the Commission directed staff to commence court proceedings in the Auckland District Court under section 10 of the Fair Trading Act 1986 against Sanitarium in relation to the *So Good* Campaign. On 18 May 1998 the Commission filed 3 informations CRN 8004038534, 535 and 536 in the Auckland District Court thereby commencing criminal proceedings (“the criminal proceedings”). One charge was laid for each advertisement version from the *So Good* Campaign.
- D. The message presented in the *So Good* Campaign was that drinking *So Good* would lower cholesterol levels. The Commission’s key concern with this message was that it was liable to mislead the public because a lowering of cholesterol levels:
- was possible for only members of the public with raised cholesterol levels, who were not the only target audience of the *So Good* Campaign;
 - could only be achieved by the substitution of whole milk with *So Good* at a **daily consumption level of 500ml.**
 - Using a quantity of 500ml per day was not supported by an actual scientific

study but was a scientific extrapolation from two studies which used an average daily consumption of 1 000ml and 724ml respectively.

- E. The Commission and Sanitarium have agreed to resolve this issue without the need for a District Court prosecution. This is to be achieved by Sanitarium publishing corrective advertising approved by the Commission, as detailed by the Commission in its letter to Sanitarium's lawyers dated 8 October 1998.

The *So Good* Campaign did not accurately explain the effect of *So Good* on cholesterol and, in the Commission's opinion breached the Fair Trading Act 1986.

2. Sanitarium is to publish corrective advertising of not less than one full sized page as detailed at annexure "A" in the following newspapers on 9 December 1998 and 16 December 1998 date: The New Zealand Herald, the Dominion or the Evening Post, the Christchurch Press, The Otago Daily Times and the Southland Times. The full sized page advertisement is to be prominently placed in each of these newspapers. The advertisement is to appear towards the front of these newspapers, and not to appear in the business or classified advertisements, or in any special features section.
3. In return the Commission is to withdraw the criminal proceedings and, subject to clause 8, the Commission is not to file further proceedings in relation to the *So Good* Campaign.
4. Sanitarium is to ensure from the date of this Deed that all its advertising and product promotions comply with the Fair Trading Act 1986. In particular

BY THIS DEED THE PARTIES AGREE AS FOLLOWS:

Sanitarium is to ensure that all its advertising and promotion of its *So Good* product complies with the Fair Trading Act 1986.

5. Sanitarium is to implement the attached compliance and advertisement checking programme detailed at annexure “B”. Sanitarium agrees to apply this programme to all advertisements and promotions for the New Zealand market.
6. Sanitarium agrees to amend or withdraw any advertising or promotions which are found to be likely to breach the Fair Trading Act 1986 as a result of being checked by the compliance and advertisement checking programme at annexure “B”.
7. The Commission may in its sole discretion publish the facts of this settlement, and may subsequently refer to them. This may include publicity by a press statement and/or articles, publications, or speeches prepared or given by the Commission members or staff.
8. If there is any contravention of this Deed, or frustration of the effectiveness or integrity of this Deed in any way, the Commission expressly reserves the right to reinstitute its investigation and take such appropriate action, including court action, as it deems appropriate.
9. This Deed is not confidential and either party may disclose its existence or contents to any person or organisation.



BY THIS DEED THE PARTIES AGREE AS FOLLOWS:

Executed under the name and seal of
The Commerce Commission

Chairman

*Executed by Bill Mancer duly authorised to sign for and on behalf of New Zealand Conference Association a trust registered under the Charitable Trust Act 1957 trading as **San** itarium Health Food Company*

Bill Mancer
Finance and Administration Manager for New Zealand