



**Australian
Competition &
Consumer
Commission**

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22 March 2012

Mr Ray Cahill
SDI Limited
3-13 Brunsdon Street
BAYSWATER VICTORIA 3153

Dear Mr Cahill

Re: Supply of do-it-yourself teeth whitening kits for use by consumers at home

I am writing to inform you of actions recently undertaken by the Australian Competition and Consumer Commission (ACCC) in relation to do-it-yourself (DIY) teeth whiteners supplied directly to consumers which contain hazardous peroxide concentrations.

I am also seeking your cooperation in providing information about teeth whitening products supplied in Australia by SDI Limited.

In late 2011, the ACCC became aware of various media reports citing injuries associated with DIY teeth bleaching agents. The Australian Dental Association also reported that dentists were seeing an increasing number of patients presenting with mouth injuries attributed to DIY teeth bleaching.

The ACCC began contacting suppliers of DIY teeth whiteners and 22 DIY teeth whitening products, from eight different suppliers, have been voluntarily recalled because they contained concentrations of more than 6% hydrogen peroxide and/or more than 18% carbamide peroxide. There has also been a compulsory recall of two more DIY teeth whiteners containing unsafe levels of hydrogen peroxide, where the supplier of those products did not voluntarily remove the products from the market. Details of all the recalled products can be accessed at <http://www.recalls.gov.au>.

It is the position of the ACCC that DIY teeth whitening products containing concentrations of more than 6% hydrogen peroxide and/or more than 18% carbamide peroxide are inherently unsafe for self-administered, at-home use and that they do not comply with the existing provisions of the Poisons Standard for a preparation intended to be taken into the mouth.

The ACCC position reflects the Scheduling Committee Record-of-Reasons (see February and June 2005: <http://www.tga.gov.au/archive/committees-ndpsc-record.htm>), the position of the Australian Dental Association (see <http://www.ada.org.au/about/policies.aspx>), the European Union's Scientific Committee on Consumer Products 2007 "*Opinion on Hydrogen peroxide, in its free form or when released, in oral hygiene products and tooth whitening products*", and the Dental Board of Australia interim policy made under section 39 of the *Health Practitioner Regulation National Law Act*:

"[that] ... any tooth whitening/bleaching products containing more than 6% concentration of the active whitening/bleaching agent, should only be used by a registered dental practitioner with education, training and competence in teeth whitening/bleaching. (<http://www.dentalboard.gov.au/Codes-Guidelines/Policies-Codes-Guidelines.aspx>)

The ACCC position does not apply to the supply of teeth whitening chemicals (of any concentration) to dental practices or to the use of these products by registered dental practitioners on patients under their direct care and supervision in their surgery/office. However, the ACCC has reason to believe that some dental suppliers and dental practices may be supplying DIY teeth whiteners with unsafe peroxide concentrations for DIY use by consumers at home.

The ACCC has recently received complaints about the alleged peroxide content of the 'Pola' range of SDI teeth whitening products.

We would appreciate your assistance in communicating the potential hazards associated with teeth whitening to the public and in helping to ensure the safety and compliance of cosmetics supplied by SDI Limited. We would also appreciate being advised of any action being taken by SDI Limited to address the possible supply of over-strength DIY teeth whiteners to consumers for home use.

In addition, please provide the following information in relation to the 'Pola' range of SDI teeth whitening products apparently intended for DIY use and advertised on the SDI Limited website: Poladay, Polanight and Poladay CP.

1. Please confirm the peroxide concentrations of the above-mentioned products.
2. Please confirm whether these products are intended for DIY teeth whitening by consumers at home. If not, please advise what measures or controls are in place to prevent the supply of these products for DIY use at home.
3. Please provide a copy of the packaging and instructions for use of the products.

The supply of any DIY teeth whitening product to a consumer for use at home constitutes the supply of a consumer good under the *Competition and Consumer Act*

2010 (CCA), whether supplied by cosmetic retailers, online traders, dental practices, pharmacies or beauty salons. **Attachment A** provides some additional information about the obligations of suppliers of teeth-whitening kits under the CCA.

Yours sincerely



Steve Hutchison
Deputy General Manager
Product Safety Branch

ATTACHMENT A

Obligations for suppliers of do-it-yourself teeth-whitening kits in Australia under the *Competition and Consumer Act 2010*

Do-it-yourself (DIY) teeth-whitening kits are consumer goods and are therefore subject to statutory consumer guarantees that require suppliers to remedy consumers if goods are unfit for purpose or of unacceptable quality, including if they are unsafe. The *Competition and Consumer Act 2010* (CCA) also requires that all representations or claims made in relation to the supply of consumer goods are truthful. It is an offence to engage in misleading and deceptive conduct.

Cosmetics, including teeth-whitening kits, are also subject to the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*, which requires that ingredients used in cosmetics are declared on the label. This mandatory information standard is intended to enable consumers to identify the presence of ingredients to which they may be allergic or sensitive, or otherwise concerned about, and to allow comparison of different products.

Suppliers of consumer goods are also required to report any serious injury, illness or death associated with consumer goods that they have supplied in Australia within two days of becoming aware of a reportable incident. A supplier who fails to fulfil this mandatory requirement may be found guilty of an offence and be liable for a penalty of up to \$16,500 for a body corporate or \$3,300 for a person other than a body corporate *for each offence*. Further information explaining your Mandatory Reporting obligations, including the online reporting form is available on the Product Safety Australia website at: <http://www.productsafety.gov.au/mandatoryreporting>.

Cosmetic ingredients must be legally permitted for use in Australia and meet requirements under the *Industrial Chemicals Notification and Assessment Act 1989* and comply with the Cosmetics Standards 2007. There are also legal requirements and restrictions for certain substances, such as hydrogen peroxide and carbamide peroxide, by virtue of the Poisons Standard 2011.

Information explaining your consumer product safety recall obligations, including the online recall notification form, can be found on the Recalls Australia website at <http://www.recalls.gov.au/content/index.phtml/itemId/1000103>.