

CONSENT AGREEMENT

THIS AGREEMENT is made on the 8 day of December, 2016 BETWEEN the **FAIR TRADING COMMISSION**, a Body Corporate with offices at 52 Grenada Crescent, Kingston 5, in the parish of Saint Andrew (hereinafter referred to as "the Commission") of the FIRST PART and **JP TROPICAL FOODS LIMITED**, a limited liability company duly registered under the Companies Act of Jamaica and having its registered office at 6A Oxford Road, Kingston 5, in the parish of Saint Andrew (hereinafter referred to as "the Respondent") of the SECOND PART.

WHEREAS:

- a. The Respondent is responsible for the manufacture and distribution of banana chips under the brand St. Mary's Banana Chips ("the Product") in Jamaica;
- b. The Respondent was engaged in a marketing promotion whereby a promotional item being a toy or toys, was offered to consumers who purchased the Product. The offer was promoted by way of label strips which ran vertically down the packaging of the product that read "collect them all" and "TOY INSIDE +3"; the label strips also included a disclaimer, in a smaller font, which explained that since the insertion of the promotional item is done mechanically, it is possible that some bags may not contain the promotional item.
- c. It came to the attention of the Commission that several packets of the Product which were purchased, did not contain the promised promotional item inside.
- d. The Commission wrote to the Respondent on August 17, 2015 outlining the concern that the disclaimer was *not* sufficiently prominent to qualify the potentially misleading claims "collect them all" or "TOY INSIDE + 3"

- e. The Respondent having, by letter dated September 2, 2015 to the Commission, indicated that in spite of its good faith efforts to ensure accuracy in respect of the inclusion of the promotional item in the Product, it is still possible that “process errors and omissions may occur”; and
- f. Based on its investigations, the FTC is of the view that the omission of the promotional item from the Product could potentially amount to misleading advertisement under section 37 of the Fair Competition Act; and
- g. In these circumstances, the Commission is prepared to exercise its discretion to discontinue the investigation and settle the matter on the conditions below pursuant to the ***Fair Competition (Notices and Procedures) Regulations 2000***.

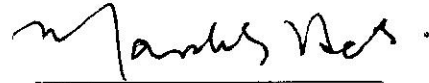
IT IS HEREBY AGREED BETWEEN THE PARTIES THAT:

1. Pursuant to Rules 5 and 9 of the ***Fair Competition (Notices and Procedures) Regulations 2000***, the Respondent will pay the Commission within fourteen (14) days of the date hereof the sum of ***Forty Five Thousand Dollars (\$45,000.00)*** by way of costs incurred in the investigation of the complaint in full and final settlement of this matter.
2. Pursuant to Rule 8(2)(c) of the ***Fair Competition (Notices and Procedures) Regulations 2000***, the Respondent shall implement the following measure in relation to the offending advertisement identified herein, and any current or future version and/or iteration thereof:
 - (a) Edit its promotional label strip affixed to packets of its St. Mary Banana Chips product to give greater prominence to the disclaimer (i.e. the phrase: “Toy insertion is mechanical, therefore some bags may not contain promo item”) thereon. In particular the disclaimer should be in *Times New Roman* font-type of size 12 in bold and in red colour.

3. For the purpose of ensuring compliance with clause 2(a) above, the Respondent shall submit (by electronic mail or any other convenient means) a draft of the label strip edited in accordance with the said clause for review by the Staff of the Commission before it is published or otherwise affixed to the product.
4. In accordance with clause 3 above, the Staff of the Commission reserves the right to provide suggestions and/or recommendations on the said draft; and the Respondent agrees to use its reasonable endeavors to comply with the said suggestions and/or recommendations.
5. The Commission reserves the right to use the facts of this complaint referred to herein, in its public education programme, without recourse to the Respondent.
6. The Commission accepts and understands that the entry into this Agreement by the Respondent is not an admission of liability for any offence under the Fair Competition Act in relation to the specific facts of this case.
7. The parties hereto will waive any and all further procedural steps, all rights to seek judicial review or otherwise to challenge or contest the validity of the Agreement. Should the Respondent fail to implement the terms herein agreed, however, the Commission may thereafter withdraw its acceptance of this Agreement and take such actions as it considers appropriate and so notify the Respondent.
8. For the avoidance of doubt, the Commission confirms that upon the signing of this Agreement by the Respondent AND the payment of the sum set out at clause 1 above AND PROVIDED ALWAYS that the Respondent fulfills its obligations under clauses 2, 3 and 4 of this Agreement, the Commission will take no steps towards the initiation of proceedings against the Respondent before the Courts for any offence under the Fair Competition Act pertaining to the complaint described in this Agreement. PROVIDED ALSO that the Respondent understands and accepts that legal proceedings will be

instituted by the Commission if it fails to abide by any of the terms of this Agreement.

**EXECUTED UNDER THE COMMON SEAL OF
JP TROPICAL FOODS LIMITED
BY DIRECTOR**



DIRECTOR
Print Name: MARSHALL HALL

AND DIRECTOR/SECRETARY

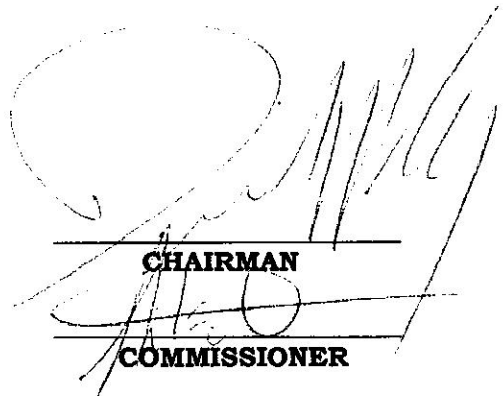


DIRECTOR/SECRETARY
Print Name: SIMONE PEARSON

IN THE PRESENCE OF:

WITNESS

**SIGNED BY:
THE FAIR TRADING COMMISSION
BY CHAIRMAN, DR. DERRICK McKOY**



CHAIRMAN
COMMISSIONER

AND COMMISSIONER

IN THE PRESENCE OF:



WITNESS