

PART 8 OF THE ENTERPRISE ACT 2002 (THE "EA")

MORENICHE LIMITED

UNDERTAKING TO THE OFFICE OF FAIR TRADING (PURSUANT TO SECTION 219 EA) RELATING TO THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 (THE "CPRS")

UNDERTAKING ("The Undertaking")

1. MoreNiche Limited (the "Trader"), company registration number: 6260274 and whose registered office is at Foxhall Lodge, Foxhall Road, Nottingham NG7 6LH, UK hereby undertakes to the Office of Fair Trading pursuant to section 219, EA that:

- (a) it will not continue or repeat the conduct described below (the "Prohibited Conduct");
- (b) it will not engage in the Prohibited Conduct in the course of its business or another business within its direct control; and
- (c) it will not consent to, or connive in, the carrying out of the Prohibited Conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3), EA) including, without limitation, the Trader.

The Trader operates an affiliate marketing network ("**Affiliate Network**") which allows registered affiliates on that network ("**Affiliates**") to promote products offered by merchants ("**Merchants**") who have agreed to pay the Trader for such promotion.

2. The Prohibited Conduct is, as the operator of an Affiliate Network, failing to take sufficient steps which are reasonably practicable (examples of which are outlined in the attached Annex) to ensure that Affiliates within the MoreNiche network when promoting MoreNiche merchant products do not engage in any commercial practice related to a MoreNiche merchant product which:

- (a) contains false information and is therefore untruthful in relation to any of the matters in regulation 5(4), CPRs or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of those matters, even if the information is factually correct; and causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise;
- (b) in its factual context, taking account the matters referred to in regulation 6(2), CPRs: (i) omits or hides material information, provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or fails to identify its commercial intent (unless already apparent

from the context); and (ii) as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, in breach of regulations 3(1), 3(4)(b) and 6, CPRs; or

(c) constitutes using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer, in breach of regulations 3(1), 3(4)(d) and Schedule 1, paragraph 11, CPRs; and/or

(d) constitutes falsely claiming or creating the impression that the Affiliate is not acting for purposes relating to its trade, business, craft or profession, or falsely representing itself as a consumer, in breach of regulations 3(1), 3(4)(d) and Schedule 1, paragraph 22, CPRs.

BY SIGNING THESE UNDERTAKINGS THE TRADER IS AGREEING THAT IT WILL BE BOUND BY THEM.

THE PROHIBITED CONDUCT CONSTITUTES COMMUNITY INFRINGEMENTS PURSUANT TO SECTION 212, EA. IF HAVING SIGNED THIS DOCUMENT THE TRADER BREACHES ANY OF THE ABOVE UNDERTAKINGS IT IS AWARE THAT IT MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215, EA.

Name (print)

Signature

Date

Witness (print).....

Signature.....

Date

ANNEXE – EXAMPLES OF REASONABLY PRACTICABLE 'SUFFICIENT STEPS' FURTHER TO THE TRADER'S CORRESPONDENCE TO THE OFFICE OF FAIR TRADING INCLUDING 1 NOVEMBER 2011

1. The Trader will ensure that any promotional, marketing or other information or material which is supplied by the Trader to any Affiliate for use on the Affiliate website does not to the best of the Trader's knowledge contain false or misleading information as described in paragraphs 2(a) and 2(b) of the Undertaking;
2. The Trader will advise Affiliates at the time the Affiliate joins the Affiliate Network that it is an offence under the CPRs falsely to claim or create the impression that the Affiliate is not acting for purposes relating to its trade, business, craft or profession, or falsely representing itself as a consumer (unless that is the case);
3. The Trader will advise Affiliates at the time the Affiliate joins the Affiliate Network that editorial content that promotes a product in circumstances where:
 - a. the promotion has been paid for or otherwise remunerated; and/or
 - b. the editorial content has been prepared and/or published by or at the instigation of anyone other than the author (including, without limitation a trader providing payment or other remuneration);

must be accompanied by a prominently displayed statement such that it would be unavoidable to the average consumer that (as the case may be) the promotion has been paid for or otherwise remunerated (if it has) and/or that the editorial content has been prepared and/or published by or at the instigation of someone other than the author (if it has).

4. By 23 May 2012, the Trader will have completed a manual review of the Top UK affiliates (defined as those making over 500 sales since joining the MoreNiche affiliate network) to ensure that the websites they operate each contain the prominently displayed statement referred to at paragraph 3 above.
5. By 21 June 2012, the Trader will have completed a manual review of the Top Non UK affiliates (defined as those making over 500 sales since joining the MoreNiche network) to ensure that the websites they operate each contain the prominently displayed statement referred to at paragraph 3 above.
6. Any form of information or code supplied by the Trader to the Affiliate to place on the Affiliate Website (for example sample code) will itself comply

with or, if it is to be adapted by the Affiliate before use, contain clear instructions how to comply with paragraph 3 above.

7. By 23 September 2012, the Trader will have manually reviewed:
 - i. Every Affiliate website operated by the Top UK and non-UK affiliates (as defined at paragraphs 4 and 5 above), and
 - ii. Every Affiliate website which has generated a sale for the first time,to ensure that:
 - a. The Affiliate's website does not include editorial content relating to a Merchant's product which the trader knows or could reasonably be expected to know falsely claims or creates the impression that the Affiliate is not acting for purposes relating to its trade, business, craft or profession or falsely represents the Affiliate as a consumer;
 - b. Editorial content that promotes a product available from a MoreNiche merchant on the Affiliate website in circumstances where (i) the promotion has been paid for or otherwise remunerated; and/or (ii) the editorial content has been prepared and/or published by or at the instigation of anyone other than the author (including, without limitation a trader providing payment or other remuneration) there is a prominently displayed statement such that it would be unavoidable to the average consumer that (as the case may be) the promotion has been paid for or otherwise remunerated (if it has) and/or that the editorial content has been prepared and/or published by or at the instigation of someone other than the author (if it has).
8. If the review indicates that the Affiliate has failed to comply with the above, the Trader will immediately draw this to the Affiliate's attention and if the act or omission has not been corrected within 7 days of notification, the account will be immediately suspended.
9. If the Trader becomes aware (through complaints or enquiries from the Advertising Standards Authority, merchants, consumers, competing affiliates or otherwise) that an Affiliate website contains misleading product claims which are not consistent with product claims approved by the relevant Merchant, the Trader will immediately draw this to the Affiliate's attention and if the Affiliate does not take corrective action within 7 days of notification, the account will be immediately suspended.
10. The Trader will provide guidance notes to Affiliates to educate them on their legal responsibilities.
11. By 23 September 2012, the Trader will have in place and operate systems to proactively spot check 50% of its sales generating Affiliates each year (such

spot checks to be conducted on the same basis, and with the same outcomes, as the process outlined in paragraphs 7 and 8 above) and apply terms and conditions which will prevent commissions being received if a site is non-compliant. The spot check to be prioritised on the basis of highest revenue generating Affiliates.