

FAIR TRADING ACT 2010

The following instrument is published under the *Fair Trading Act 2010* section 21



Consumer Goods (Cosmetics) Information Standard 2020

I, Michael Sukkar, Minister for Housing and Assistant Treasurer, make the following information standard.

Dated 19 November 2020

Michael Sukkar
Minister for Housing and Assistant Treasurer

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Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991

Part 1—Preliminary

1 Name

This instrument is the *Consumer Goods (Cosmetics) Information Standard 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	25 November 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 134(1) of the Australian Consumer Law.

Note: The reference to the Australian Consumer Law is a reference to Schedule 2 to the *Competition and Consumer Act 2010* as it applies as a law of the Commonwealth, States and Territories: see section 140K of that Act and corresponding provisions of Acts of States and Territories applying that Schedule.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Application

- (1) This instrument applies to cosmetic products:
- (a) manufactured in Australia and intended to be used in Australia; or
 - (b) imported into Australia;

if the products are manufactured (whether in or outside Australia) after the end of 180 days after the commencement of this instrument.

Note: See section 12 for a transitional provision dealing with cosmetic products manufactured earlier.

- (2) However, this instrument does not apply to:
- (a) therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*; or
 - (b) hand sanitisers that, under the *Therapeutic Goods (Excluded Goods—Hand Sanitisers) Determination 2020*, are excluded goods for the purposes of the *Therapeutic Goods Act 1989*; or
 - (c) free samples of a cosmetic product; or
 - (d) testers of a cosmetic product.

6 Definitions

In this instrument:

alcohol includes, but is not limited to, ethyl alcohol (ethanol), isopropyl alcohol and alcohol denat.

aroma has the same meaning as in the *International Cosmetic Ingredient Dictionary and Handbook*, Sixteenth Edition 2016.

Note: The *International Cosmetic Ingredient Dictionary and Handbook*, Sixteenth Edition 2016 defines **aroma** as follows:

“Aroma is a term for ingredient labeling used to identify that a product contains a material or combination of materials normally added to a cosmetic to produce or to mask a particular flavor. The term Aroma shall be used in the European Union (EU) for ingredient labeling instead of listing the individual components of a flavor under the 6th Amendment to the EC Cosmetics Directive. The INCI name permitted for labeling in the U.S. that corresponds to this EU labeling name is Flavor. See “Regulatory and Ingredient Use Information,” regarding use of the INCI Names, Flavor and Aroma in Volume 1, Introduction, Part A.”

container, in relation to a cosmetic product, means the container or wrapper in which the product is packed.

cosmetic product means a substance or preparation intended for placement in contact with any external part of the human body, including:

- (a) the mucous membranes of the oral cavity; and
- (b) the teeth;

with a view to:

- (c) altering the odours of the body; or
- (d) changing its appearance; or
- (e) cleansing it; or
- (f) maintaining it in good condition; or
- (g) perfuming it; or
- (h) protecting it.

flavour has the same meaning as the definition of **flavor** in the *International Cosmetic Ingredient Dictionary and Handbook*, Sixteenth Edition 2016.

Note: The *International Cosmetic Ingredient Dictionary and Handbook*, Sixteenth Edition 2016 defines **flavor** as follows:

“Flavor is a term for ingredient labeling used to identify that a product contains a material or combination of materials normally added to a cosmetic to produce or to mask a particular flavor. The term Flavor may be used instead of listing the individual components of the flavor in accordance with U.S. 21 CFR 701.3(a). The labeling name in the EU will be Aroma under the 6th Amendment to the EC Cosmetics Directive. See “Regulatory and Ingredient Use Information,” regarding use of the INCI Names, Flavor and Aroma in Volume 1, Introduction, Part A.”

fragrance means a substance used solely to impart an odour to a cosmetic product.

hand sanitiser means an antibacterial skin care product:

- (a) that consists of, contains or generates one or more antimicrobial active substances; and
- (b) that is represented in any way to be, or is likely to be taken to be (whether because of the way in which it is presented or for any other reason):
 - (i) for use on hands when soap and water are not available; and
 - (ii) applied to the hands without rinsing off; and
 - (iii) intended to destroy, deter, render harmless, prevent the action of, or otherwise exert a controlling effect on any bacteria on the skin.

incidental ingredient means any ingredient or substance which has no technical or functional effect in a cosmetic product and is present in insignificant levels.

Part 2— Information standard

7 List of ingredients

- (1) The ingredients in a cosmetic product must be listed:
 - (a) on the container; or
 - (b) if the product is not packed in a container—on the product;
in descending order by volume or mass.
- (2) As an alternative to subsection (1), the ingredients may be listed in the following order:
 - (a) ingredients (except colour additives) in concentrations of 1% or more—in descending order by volume or mass;
 - (b) ingredients (except colour additives) in concentrations of less than 1%—in any order;
 - (c) colour additives—in any order.
- (3) If subsection (1) or (2) cannot be complied with in relation to a container or a cosmetic product because of its:
 - (a) size; or
 - (b) shape; or
 - (c) nature;a list of the product's ingredients must be shown in another way that ensures that a consumer can be informed about the ingredients in the product.

Colour additives

- (4) A list of ingredients in a cosmetic product may include a reference to a colour additive that is not in the cosmetic product if the colour additive is:
 - (a) added to some batches of the product for the purposes of colour matching; or
 - (b) used in one or more (but not all) of a range of cosmetic products.
- (5) For the purposes of paragraph (4)(b), a range of products means a number of cosmetic products produced by the same supplier that are:
 - (a) similar in composition; and
 - (b) intended for the same use; and
 - (c) available in different shades.
- (6) If a cosmetic product may contain a colour additive mentioned in subsection (4), the list of ingredients:
 - (a) must say that the product may contain the additive; and
 - (b) must do so by using:
 - (i) the words “may contain” (or other words of similar meaning) and the name of the additive; or
 - (ii) the symbol “+/-” and the name of the additive.

Flavours, fragrances and incidental ingredients

- (7) A flavour or flavours in a cosmetic product must be shown in the list of the product's ingredients by including in the list:
 - (a) the word “flavour”, “flavours”, “aroma” or “aromas”; or
 - (b) the ingredients in the flavour or flavours.

- (8) A fragrance or fragrances in a cosmetic product must be shown in the list of the product's ingredients by including in the list:
 - (a) the word "fragrance", "fragrances", "parfum" or "parfums"; or
 - (b) the ingredients in the fragrance or fragrances.
- (9) An incidental ingredient in a cosmetic product need not be included in the list of the product's ingredients.

8 Form of ingredients list

- (1) A list of ingredients must be:
 - (a) prominently shown; and
 - (b) clearly legible.
- (2) The names of the ingredients in the list must be either their English names or their International Nomenclature Cosmetic Ingredient names.
- (3) There may also be a list of ingredients in another language.

9 Confidentiality provisions

On the request of the manufacturer or importer of a cosmetic product, the Minister may, by notifiable instrument, give permission for an ingredient in the product to be shown in a list of the ingredients in the product as an "other ingredient" (instead of by name and volume or mass) if the Minister is satisfied:

- (a) that revealing the name of the ingredient would prejudice a trade secret; and
- (b) that inclusion of the ingredient in the product is unlikely to be harmful to a consumer.

10 Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister under section 9 refusing to give permission.
- (2) If the Minister notifies a person of a decision under section 9 refusing to give permission, the notice must include a statement to the effect:
 - (a) that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
 - (b) that a person whose interests are affected by the decision may request a statement under section 28 of that Act.
- (3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.

11 Additional requirements for hand sanitisers

- (1) This section applies to hand sanitiser that contains alcohol as the primary active ingredient.

Note: This instrument does not apply to hand sanitisers that are therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*, or that are excluded goods for the purposes of that Act under the *Therapeutic Goods (Excluded Goods—Hand Sanitisers) Determination 2020* (see subsection 5(2) of this instrument).

- (2) The amount of alcohol contained in the hand sanitiser must be shown as a percentage (%), by volume per volume (v/v), in a manner that is prominent and clearly legible:
 - (a) in the list of ingredients; or
 - (b) elsewhere on the container.

- (3) The following warnings must be shown on the container (as the words set out below, or as other words, or pictograms, that could reasonably be regarded as having the same meaning):

Keep out of reach of children

For external use only

If ingested, seek immediate medical attention

Flammable—keep away from fire and heat

Discontinue use if skin irritation occurs

Note: If a supplier makes a claim or representation intended to promote a product, such as “kills 99.99% of germs”, the supplier may be required to give information and/or produce documents to the regulator that could be capable of substantiating or supporting the claim or representation (see section 219 of the Australian Consumer Law).

12 Transitional provisions

- (1) A cosmetic product manufactured before the end of 180 days after the commencement of this instrument must comply with either:
- (a) this instrument; or
 - (b) the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*, as in force immediately before the commencement of this instrument.

Note: The *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* could in 2020 be viewed on the Federal Register of Legislation website (<https://www.legislation.gov.au>).

- (2) A permission given under regulation 7 of the *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991* and in force immediately before the commencement of this instrument continues to apply, on and after that commencement, as if it were a permission given under section 9 of this instrument.

Schedule 1—Repeals

Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991

1 The whole of the instrument

Repeal the instrument.
