



Conseil de la radiodiffusion et des  
télécommunications canadiennes

Canadian Radio-television and  
Telecommunications Commission

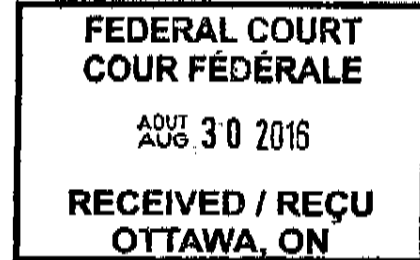
Ottawa, Canada  
K1A 0N2

1 D#Z.  
T-1438-16

29 August 2016

Our File #: 4688-005

The Administrator  
Federal Court of Canada  
Ottawa, Ontario  
K1A 0H9



Dear Sir/Madam:

**Re: Registration of Undertaking given by Kellogg Canada Inc.,  
and accepted by a person designated for that purpose on behalf of the Canadian  
Radio-television and Telecommunications Commission**

The Commission requests that the attached Undertaking be filed with the Court, pursuant to subsection 40(2) of *Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23.

Two copies of the Undertaking, which I have duly certified, are included herewith.

Sincerely,

Manon Bombardier  
Chief Compliance and Enforcement Officer

Encl.

Canada

1-14387



Conseil de la radiodiffusion et des  
télécommunications canadiennes

Canadian Radio-television and  
Telecommunications Commission

Ottawa, Canada  
K1A 0N2

29 August 2016

To: Federal Court of Canada

I certify the attached to be a true copy of the Undertaking given by Kellogg Canada Inc. on **17 August 2016**, and accepted by a person designated for that purpose on behalf of the Canadian Radio-television and Telecommunications Commission on **22 August 2016**.

Sincerely,

Manon Bombardier  
Chief Compliance and Enforcement Officer

## Undertaking

FEDERAL COURT COUR FÉDÉRALE	
FILED	REC. COMM.
AOUT 30 2016 AUG 30 2016	
KATHY CRAIGIE	
OTTAWA, ON	- / -

In the Matter of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, s. 40(2)

And in the matter of an Undertaking given by Kellogg Canada Inc., dated 17 August 2016, and accepted by a person designated for that purpose on behalf of the Canadian Radio-television and Telecommunications Commission, on 22 August 2016.

### CERTIFICATE

I HEREBY CERTIFY that the attached is a true copy of the Undertaking given by Kellogg Canada Inc. dated 17 August 2016 and accepted by a person designated for that purpose on behalf of the Canadian Radio-television and Telecommunications Commission on 22 August 2016, received, filed and entered of record in the Registry of the Court, pursuant to subsection 40(2) of the *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, the 30 of August, 2016 in the Judgment and Order Book of the Federal Court of Canada, Volume 1311, Pages 1-3.

DATED AT OTTAWA, ONTARIO this 30 of August, 2016.

[SIGNATURE OF REGISTRY OFFICER]

**KATHY CRAIGIE**  
**REGISTRY OFFICER**  
**AGENT DU GREFFE**

**Undertaking by Kellogg Canada Inc. to the Chief Compliance and Enforcement Officer of the Canadian Radio-television and Telecommunications Commission**

**WHEREAS** *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23 (the "*Act*") prohibits, amongst other things, the sending of commercial electronic messages without the prior consent of the recipient and grants the Canadian Radio-television and Telecommunications Commission (the "*Commission*") the responsibility for the administration of sections 6 to 46 of the *Act*;

**WHEREAS** the Governor-in-Council made the *Electronic Commerce Protection Regulations*, SOR/2013-221 (the "*Regulations*"), pursuant to subsection 64(1) of the *Act*, which, amongst other things, provides conditions for the use of consent;

**WHEREAS** the Commission made the *Electronic Commerce Protection Regulations (CRTC)*, SOR/2012-36 (the "*Regulations (CRTC)*"), pursuant to its authority under subsection 64(2) of the *Act*, which, amongst other things, prescribes the form and certain information to be included in commercial electronic messages;

**WHEREAS** Kellogg Canada Inc. ("*Kellogg*") sends commercial electronic messages to promote its products;

**WHEREAS** the Chief Compliance and Enforcement Officer of the Commission ("*CCEO*") commenced an investigation into six complaints received by the Commission relating to commercial electronic messages sent by and/or on behalf of Kellogg;

**WHEREAS** at issue is the alleged sending of commercial electronic messages by and/or on behalf of Kellogg, within the meaning of subsection 1(2) of the *Act*, to Canadian consumers in a manner that did not comply with paragraph 6(1)(a) of the *Act*;

**WHEREAS** the specific allegation by the CCEO is that commercial electronic messages sent to Canadian consumers by and/or on behalf of Kellogg, on and between 1 October 2014 and 16 December 2014, were non-compliant with paragraph 6(1)(a) of the *Act*, in that Kellogg or its agents had not obtained the consent of the person to whom the message was sent;

**WHEREAS** Kellogg has cooperated fully with the CCEO during the course of this investigation;

**AND WHEREAS** Kellogg has voluntarily undertaken, pursuant to section 21 of the *Act*, to fully resolve the CCEO's outstanding concerns regarding Kellogg's compliance with paragraph 6(1)(a) of the *Act* and the sending of commercial electronic messages, by and/or on its own behalf, on the terms set out herein.

**NOW THEREFORE, PURSUANT TO SECTION 21 OF THE ACT, KELLOGG CANADA INC. UNDERTAKES THE FOLLOWING:**

**1. Application of this Undertaking**

- 1.1 The provisions of this Undertaking shall apply to Kellogg and its subsidiaries, successors and assigns that send commercial electronic messages in Canada either directly (on its own behalf) or indirectly (through a person or organization acting on their behalf, in Canada or abroad).
- 1.2 To facilitate various time periods set out in this Undertaking, this Undertaking shall be deemed to take effect on August 22, 2016 (the "Effective Date").

**2. Compliance with the Act and Regulations**

- 2.1 Kellogg undertakes to comply with, and ensure that any third party authorized to act on its behalf complies with, the *Act*, *Regulations* and *Regulations (CRTC)* and in particular: paragraph 6(1)(a) of the *Act*, as amended from time to time.

**3. Monetary Payment**

- 3.1 Kellogg will pay the amount of \$60,000 CDN in respect of the acts that resulted in the alleged violations of section 6(1)(a) of the *Act*, the payment of which amount shall fully resolve all actual, alleged or potential liability of Kellogg and its subsidiaries for all commercial electronic messages sent by and/or on behalf of Kellogg during the period between 1 October 2014 and 16 December 2014 up to the Effective Date.

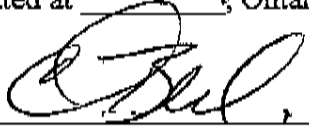
**4. Corporate Compliance Program**

- 4.1 Kellogg undertakes to review and update its compliance program addressing the sending of commercial electronic messages (the "Compliance Program") to ensure that it is compliant with, and with the goal that it will promote compliance with, the *Act*, *Regulations* and *Regulations (CRTC)*.
- 4.2 In particular, Kellogg will review, update and implement the following elements of its Compliance Program
1. Review and revision of written policies and procedures regarding compliance with the *Act* and *Regulations (CRTC)* generally, and specifically, without limiting the generality of the foregoing, section 6 of the *Act*.
  2. Development and provision of periodic training programs, which include compliance procedures and processes to comply with the *Act*, *Regulations* and *Regulations (CRTC)*, for employees of Kellogg who are involved in the collection of email addresses for the purpose of sending, and the sending of, commercial electronic messages;

3. Tracking of commercial electronic message complaints and subsequent resolution;
  4. Implementing updated monitoring and auditing mechanisms to assess compliance with the *Act, Regulations and Regulations (CRTC)* in respect of the sending of commercial electronic messages; and
  5. Implementing effective measures to correct any aspect of the Compliance Program that fails to comply with the *Act*.
- 4.3 Kellogg senior management will continue to fully support and enforce the Compliance Program and will take an active and visible role in its continued implementation. Once complete, the Compliance Program will be reviewed and amended by senior management from time to time, as appropriate.
- 4.3 Within 30 days of the Effective Date, Kellogg undertakes to advise the CCEO of the name of its corporate compliance officer who will be responsible for implementing the Compliance Program and who will facilitate communications with the Commission regarding ongoing compliance measures.
- 4.5 Within 90 days of the Effective Date, Kellogg undertakes to confirm, in writing, to the CCEO that it has commenced the enhancement of the Compliance Program in compliance with this Undertaking.
- 4.6 During the two year period commencing on the Effective Date, Kellogg undertakes to review its Compliance Program on an annual basis and to provide a written report of such annual review(s) of the Compliance Program and its implementation, and regarding compliance with the *Act*, if requested by a person designated by the Commission in writing. Any such report shall be submitted within 30 business days of the request being made. The request may include, but is not limited to, the reasonable production of all documents and measures taken to ensure that the personnel of Kellogg have performed their due diligence to ensure that Kellogg compliance procedures are in compliance with the *Act, Regulations and Regulations (CRTC)*.
- 5. General**
- 5.1 This Undertaking is given voluntarily by Kellogg. This Undertaking fully and completely resolves all outstanding issues with respect to Kellogg's or its subsidiaries' alleged non-compliance with the *Act*, including the payment of any specified amount in relation thereto, and between the Commission and Kellogg in relation to the CCEO's investigation into the sending of commercial electronic messages by and/or on behalf of Kellogg or its subsidiaries during the period of 1 October 2014 to 16 December 2014, up to and including the Effective Date.
- 5.2 This Undertaking may be executed in counterpart and by facsimile and each such counterpart shall constitute an original and all of which taken together shall constitute one and the same instrument, dated as of the Effective Date.

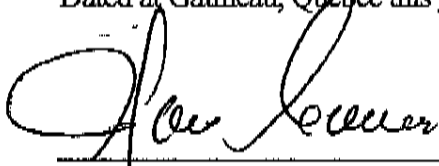
5.3 This Undertaking shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Dated at Mississauga, Ontario this 17<sup>th</sup> day of August, 2016

  
\_\_\_\_\_  
Kellogg Canada Inc., by  
Chris Bell  
Vice President, Marketing

This undertaking has been accepted by a person designated for the purposes of section 21 of the Act.

Dated at Gatineau, Quebec this 22<sup>nd</sup> day of August, 2016

 p.p.  
\_\_\_\_\_  
Manon Bombardier  
Chief Compliance and Enforcement Officer, Compliance and Enforcement Sector  
Canadian Radio-television and Telecommunications Commission