TRADE PRACTICES ACT 1974

AND

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

Aldi Foods Pty Ltd ACN 086 210 139

Persons giving this undertaking

(1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Aldi Foods Pty Ltd ACN 086 210 139 (**Aldi**) of 1 Sargents Road, Minchinbury, New South Wales, for the purposes of:

(a) section 87B of the *Trade Practices Act 1974* (**the TPA**), as applied by Item 6 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in prior to 1 January 2011; and

(b) section 87B of the *Competition and Consumer Act 2010* (**the CCA**), for conduct engaged in from 1 January 2011.

Background

(2) Aldi carries on the business, through Aldi Stores (a Limited Partnership), of operating Aldi supermarkets located in New South Wales, Victoria, Australian Capital Territory and Queensland. The products Aldi supermarkets sell to consumers includes, but not limited to, a range of food products under the Aldi 'Just Organic' brand.

(3) During the period from July 2006 and continuing at the date of this undertaking, Spring Gully Foods Pty Ltd (**Spring Gully**) manufactured and supplied 'Just Organic' honey in 500g jars to Aldi. Spring Gully controlled the composition of the product and Spring Gully and Aldi were involved in developing the content of the label affixed to the jars of 'Just Organic' honey. Aldi approved the content of the label in consultation with its due diligence provider.

(4) During the period from January 2008 to December 2010, Aldi offered 'Just Organic' honey for sale to consumers at Aldi supermarkets and supplied 'Just Organic' honey to consumers with 3 different labels as follows:

(a) during the period from July 2006 to July 2008, the label included the following statement:

"*This Pure Organic Honey, rich in natural goodness, is produced on Kangaroo Island by the world's only remaining pure strain of the Ligurian honeybee*" (**Label A**).

(b) during the period from April 2008 to July 2010, the label included the following statement:

"*This Pure Organic Honey is made with honey produced on Kangaroo Island, home to the world's only remaining pure strain of the Ligurian honeybee*" (**Label B**).

(c) during the period from August 2010 to December 2010, the label included the following statement:

"*This Pure Organic Honey is made with a blend of Australian organic certified honey and organic honey produced on Kangaroo Island, home to the world's only remaining pure strain of the Ligurian honeybee*" (**Label C**).

A copy of Labels A, B and C is at **Annexure A**.

(5) The ACCC considers that:

(a) the statement included on Label A referred to above; and

(b) the statement included on Label B referred to above,

represented to consumers that 'Just Organic' honey contained 100% Kangaroo Island honey; and

(c) the statement included on Label C referred to above represented to consumers that 'Just Organic' honey contained a not insignificant amount of Kangaroo Island honey.

(6) Following an investigation by the ACCC, the ACCC was advised by Spring Gully that:

(a) during the period from January 2008 to July 2008, 'Just Organic' honey with Label A contained between 1.18% and 42.53% Kangaroo Island honey;

(b) 'Just Organic' honey with Label B contained between 0.84% and 50.07% Kangaroo Island honey, with the exception of one batch of the product that contained 100% Kangaroo Island honey;

(c) 'Just Organic' honey with Label C contained between 0.076% and 10.13% Kangaroo Island honey.

(7) The ACCC considers that, by reason of the matters described in paragraphs 2 to 6 above, Aldi has:

(a) engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 52 of the TPA;

(b) in connection with the supply or possible supply of goods, or in connection with the promotion of the supply of goods, falsely represented that goods were of a particular composition in contravention of section 53(a) of the TPA; and

(c) engaged in conduct that was liable to mislead the public as to the manufacturing process or characteristics of goods in contravention of section 55 of the TPA.

(8) In response to the ACCC's investigation, Aldi has:

(a) acknowledged that its conduct was likely to have contravened sections 52, 53(a) and 55 of the TPA; and

(b) offered this undertaking to the ACCC.

Commencement of Undertaking

(9) This undertaking comes into effect when:

(i) the undertaking is executed by Aldi; and

(ii) the ACCC accepts the undertaking so executed.

(10) Upon the commencement of this undertaking, Aldi undertakes to assume and act in accordance with the obligations set out in paragraph 11 below for a period of three years from the date the undertaking comes into effect.

Undertakings

(11) Aldi undertakes for the purposes of section 87B of the TPA and section 87B of the CCA that:

(i) it will not, in trade or commerce:

(a) represent that honey products are sourced from a particular location or region when those products are not sourced 100% from the particular location or region;

(b) represent that honey products are a blend of honey with reference to a particular location or region when those products contain an insignificant amount of honey from the particular location or region;

(ii) that it will:

(a) publish, within 21 days of the date of the commencement of this undertaking on the website, www.aldi.com.au, a prominent link headed 'Corrective Notice' which, when clicked on, will display a corrective notice as set out in **Annexure B** to this undertaking. The link will be maintained for a period of 2 months from the date of the commencement of this undertaking. The corrective notice will remain open on the user's browser until he or she closes the link;

(b) display, within 21 days of the commencement of this undertaking in each Aldi Store a corrective notice as set out in **Annexure B** to this undertaking. The corrective notice will be displayed for a period of 2 months in a prominent position in close proximity to the entrance to each store. The corrective notice will be in bold text in a type not less than 14 font print size with the heading in text in a type not less than 18 font print size;

(c) establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure C** to this undertaking, being a program designed to minimise the risk of future breaches of the Australian Consumer Law (**the ACL**), contained in Schedule 2 of the CCA, and to ensure its

awareness of the responsibilities and obligations in relation to the requirements of sections 18, 29(a) and 33 of the ACL within 3 months of the date of this undertaking coming into effect;

(d) maintain and continue to implement the Compliance Program for a period of 3 years from the date of this undertaking coming into effect;

(3) provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure C.**

Acknowledgments

(12) Aldi acknowledges that:

(i) the ACCC will make this undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;

(ii) the ACCC will, from time to time, make public reference to the undertaking including in news media statements and in ACCC publications;

(iii) this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

(iv) a summary of the ACCC Compliance Program review reports referred to in **Annexure C** of the undertaking may be held with this undertaking in the public register.

Executed by

Aldi Foods Pty Ltd ACN 086 210 139 pursuant to section 127(1) of the *Corporations Act 2001*.

.....

Signature of Secretary

.....

Signature of Director

STEVEN BIGG

(Print) Name of Secretary

THOMAS DAUNT

(Print) Name of Director

This...12th.....day of...JULY.....2011

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO:

(A) SECTION 87B OF THE *TRADE PRACTICES ACT 1974* AS APPLIED BY ITEM 6 OF SCHEDULE 7 OF THE *TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) ACT (NO.2) 2010*, FOR CONDUCT PRIOR TO 1 JANUARY 2011;

(B) SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010* FOR CONDUCT FROM 1 JANUARY 2011.

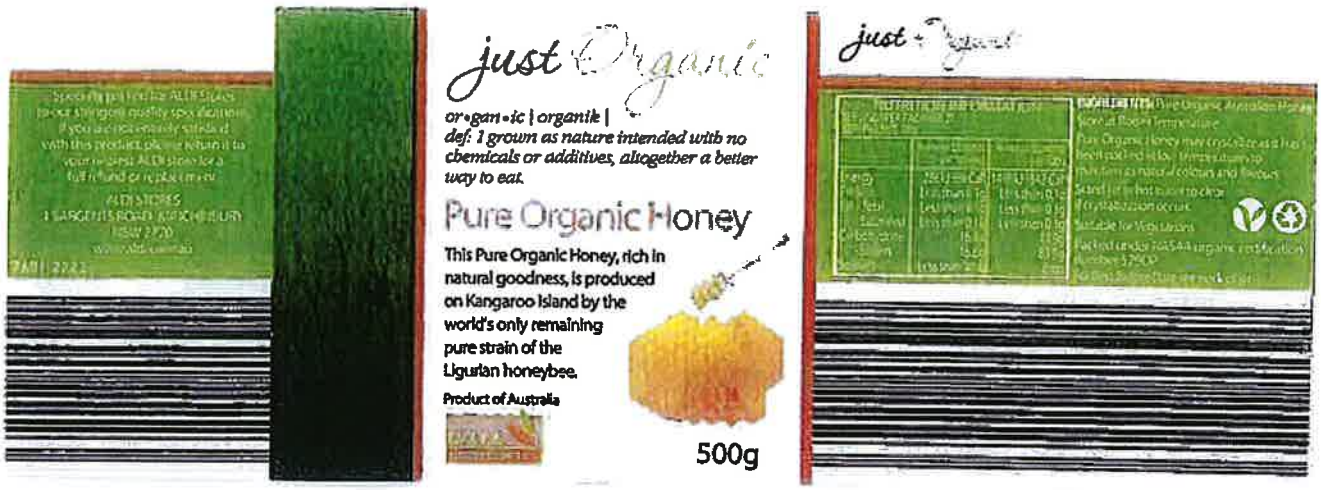
.....

Graeme Julian Samuel
Chairman

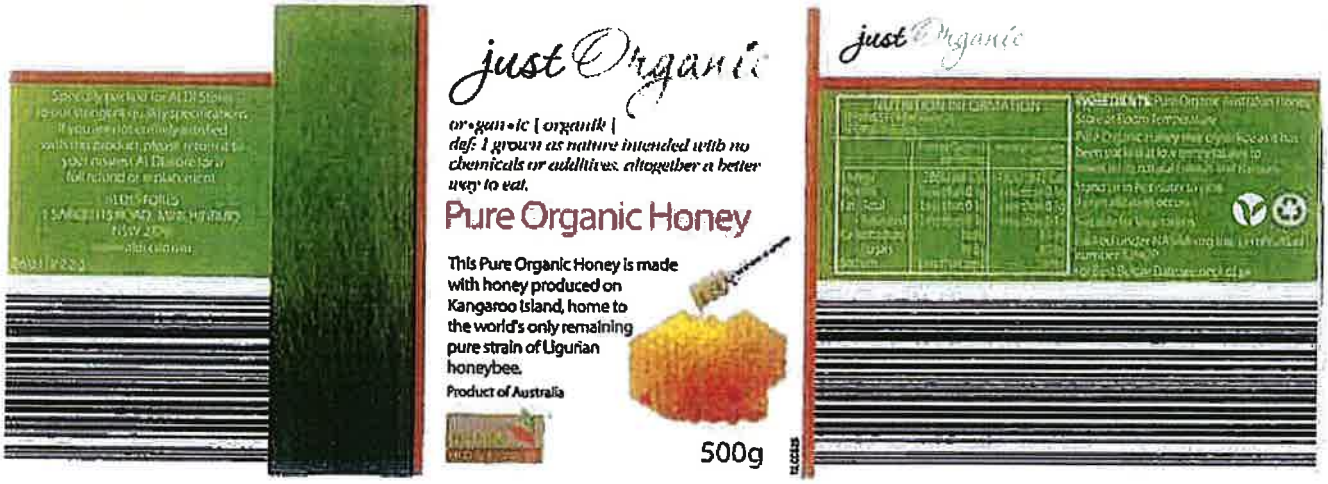
This...22nd.....day of...July.....2011

ANNEXURE A

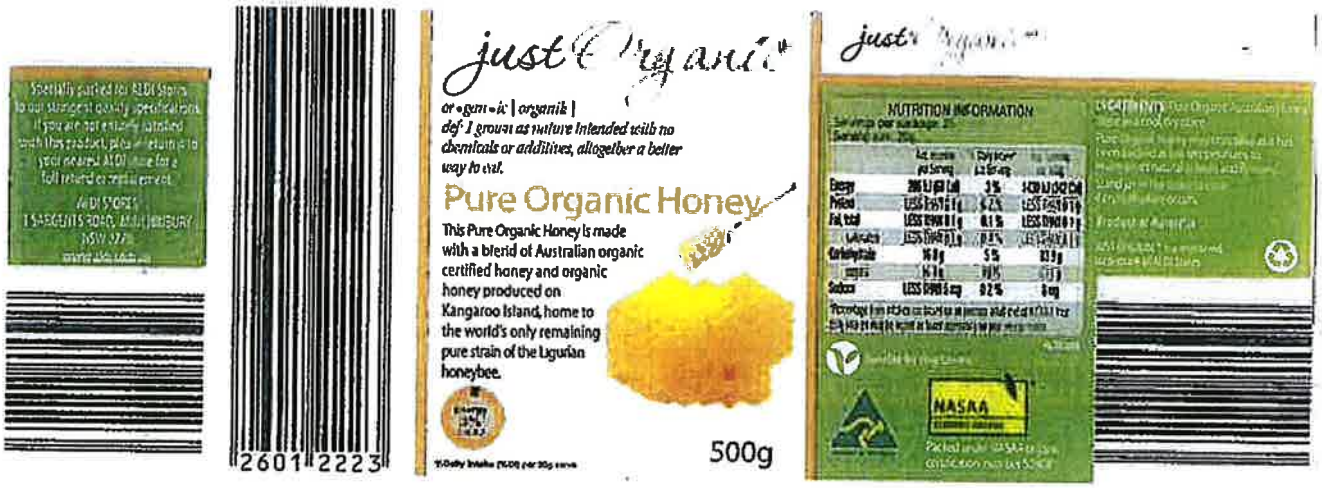
LABEL A



LABEL B



LABEL C



ANNEXURE B

CORRECTIVE NOTICE

[Aldi Logo] [ACCC logo]

Aldi apologises to its customers for making false representations between about January 2008 and December 2010, in relation to 'Just Organic' honey sold exclusively through Aldi supermarkets.

Spring Gully Foods has manufactured and supplied honey in 500g jars to Aldi under the Aldi brand name 'Just Organic' since mid 2006. Spring Gully Foods was involved in the development of the content of the label which Aldi approved.

From January 2008 to July 2010, the label on jars of 'Just Organic' honey indicated that it contained 100% honey from Kangaroo Island when this was not the case. In fact, it contained between 0.84% to 50.07% honey from Kangaroo Island mixed with Australian organic honey from other regions, with the exception of one batch which contained 100% honey from Kangaroo Island.

From July 2010 to December 2010, the label on jars of 'Just Organic' honey indicated that it contained a blend of honey, including honey from Kangaroo Island when it only contained between 0.076% and 10.13% of honey from Kangaroo Island.

The ACCC raised its concerns with Aldi that the statements included on the labels were likely to mislead consumers in breach of sections 52, 53(a) and 55 of the *Trade Practices Act 1974* (which, on 1 January 2011 was renamed the *Competition and Consumer Act 2010*, and amended to include the Australian Consumer Law).

Aldi acknowledges that, although it did not manufacture 'Just Organic' honey, it was responsible for the content of the label and offered the product for sale to consumers, and it is likely to have contravened the *Trade Practices Act 1974*.

As a result of the ACCC's investigation, Aldi immediately took corrective measures, including withdrawal of the product from sale. Aldi fully cooperated with the ACCC, and also agreed to provide the ACCC with a court enforceable undertaking.

Full details of the undertaking can be found on the Public Register on the ACCC's website at www.accc.gov.au

ANNEXURE C

TRADE PRACTICES COMPLIANCE PROGRAM

Aldi Foods Pty Ltd (**Aldi**) will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within three months of the date of this undertaking coming into effect Aldi will appoint a Director or a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained.

2. Within one month of the date of this undertaking coming into effect Aldi shall appoint a qualified, internal or external, compliance professional with expertise in trade practices issues (**the Compliance Advisor**). Aldi shall instruct the Compliance Advisor to conduct a Competition and Consumer Act risk assessment (**Risk Assessment**) in accordance with 2.1 – 2.4 below:

   2.1. identify the areas where Aldi is at risk of breaching the sections 18, 29(a) and 33 of the Australian Consumer Law (**the ACL**), contained in Schedule 2 to the *Competition and Consumer Act 2010*;

   2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Aldi should they occur;

   2.3. identify where there may be gaps in Aldi's existing procedures for managing these risks; and

   2.4. provide recommendations for action having regard to the assessment.

Compliance Policy

3. Aldi will, within 30 days of the undertaking coming into effect, issue a policy statement outlining Aldi's commitment to trade practices compliance (**the Compliance Policy**). Aldi will ensure that the Compliance Policy:

   3.1. is written in plain language;

3.2. contains a statement of commitment to compliance with the *Competition and Consumer Act 2010*;

3.3. contains a strategic outline of how commitment to trade practices compliance will be realised within Aldi;

3.4. contains a requirement for all staff to report any Compliance Program related issues and trade practices compliance concerns to the Compliance Officer;

3.5. contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and

3.6. contains a clear statement that Aldi will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the *Competition and Consumer Act 2010* and will not indemnify them.

Complaints Handling System

4. Aldi will ensure that the Compliance Program includes a trade practices complaints handling system. Aldi shall use its best endeavours to ensure this system is consistent with AS/ISO 10002:2006 ***Customer satisfaction - Guidelines for complaints handling in organizations***, though tailored to Aldi's circumstances. Aldi will ensure that staff and customers are made aware of the complaints handling system.

5. Aldi will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with trade practices complaints. Aldi shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Aldi's circumstances.

Reports to the Board/Senior Management

6. Aldi will ensure that the Compliance Officer reports to the Board and/or senior management meetings of Aldi every 12 months on the continuing effectiveness of the Compliance Program.

Training

7. Aldi will ensure that the Compliance Program provides for regular (at least once a year) and practical training for all directors, officers, employees, representatives and agents of Aldi, whose duties could result in them being concerned with conduct that may contravene sections 18, 29(a) and 33 of the ACL. Aldi must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

8. Aldi will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents, whose duties could result in them being concerned with conduct that may contravene sections 18, 29(a) and 33 of the ACL.

Supply of Compliance Program Documents to the ACCC

9. Aldi shall, at its own expense, within 6 months of the date of this undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program and implement promptly and with due diligence any recommendations that the ACCC may make that are reasonably necessary to ensure that Aldi maintains and continues to implement the Compliance Program in accordance with the requirements of this undertaking.

Reviews

10. Aldi shall, at its own expense, cause annual Reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:

    10.1. **Scope of the Reviews** – the Reviews should be broad and rigorous enough to provide Aldi and the ACCC with a supportable verification that Aldi has in place a program that complies with each of the requirements detailed in paragraphs 1 – 9 above and to provide the Review reports and opinions detailed at point 11 below;

    10.2. **Independence of Reviewer** – Aldi shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

        10.2.1. did not design or implement the Compliance Program;

10.2.2. is not a present or past staff member or director of Aldi;

10.2.3. has not acted and does not act for Aldi in any trade practices related matters;

10.2.4. has not and does not act for or consult to Aldi or provide other services on trade practices related matters other than Compliance Program reviewing; and

10.2.5. has no significant shareholding or other interests in Aldi.

Evidence

10.3. Aldi shall use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Aldi's possession or control, including without limitation:

10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Aldi;

10.3.2. Aldi's records, including Aldi's complaints register/reports and any documents relevant to Aldi's training or induction program; and

10.3.3. documents created by Aldi's consultants and legal practitioners for use in Aldi's Compliance Program.

10.4. Aldi shall ensure that the first Review is completed within one year and one month of this undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

11. Aldi shall use its best endeavours to ensure the Reviewer sets out the findings of the Review in two separate reports as set out below:

Company Compliance Program Review Report (to be provided to Aldi)

11.1. Aldi's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program to the corporation including:

11.1.1. if, and to what extent, the Compliance Program of Aldi includes all the elements detailed in paragraphs 1 – 10 above;

11.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;

11.1.3. if, and to what extent, the trade practices training is effective;

11.1.4. if, and to what extent, Aldi's complaints handling system is effective;

11.1.5. if, and to what extent, Aldi is able to provide confidentiality and security to whistleblowers, and staff are aware of the whistleblower protection mechanisms; and

11.1.6. recommendations for rectifying deficiencies in 11.1.1-11.1.5 above that the Reviewer thinks are reasonable necessary to ensure that Aldi maintains and continues to implement the Compliance Program in accordance with the requirements of the undertaking.

ACCC Compliance Program Review Report (to be provided to ACCC)

11.2. The ACCC Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

11.2.1. details of the evidence gathered and examined during the Review;

11.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;

11.2.3. the Reviewer's opinion on whether Aldi has in place a Compliance Program that complies with the requirements detailed in paragraph 1-10 above;

11.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Aldi's Compliance Program;

11.2.5. confirmation that any actual and potential inadequacies in Aldi's Compliance Program have been brought to the attention of the Compliance Officer, the Board and/or senior management of Aldi;

11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Aldi's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Aldi;

11.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and

11.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

11.3. Aldi will ensure that the Review Reports are completed and provided to Aldi within two months of each Review.

11.4. Aldi will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

11.5. Aldi acknowledges that a brief statement regarding the ACCC Compliance Program Review Report may be included in the ACCC's section 87B public register.

Recommendations

12. Aldi shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that Aldi maintains and continues to implement the Compliance Program in accordance with the requirements of this undertaking.

13. If requested by the ACCC, Aldi shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

14. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Aldi shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting ACCC Review Report to be provided to the ACCC.