

COMPETITION AND CONSUMER ACT 2010

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

by

Game Farm Pty Ltd

ACN. 001.417.465

Persons giving this undertaking

- (1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Game Farm Pty Ltd (ACN 001 417 465) (**Game Farm**) of Level 7, 9 George Street, Parramatta, New South Wales, for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

- (2) Game Farm is incorporated under the *Corporations Act 2001* and is registered in New South Wales.
- (3) Game Farm is a large multi-species game bird producer. It supplies quail, spatchcock, duck, chicken and turkey to consumers through supermarket chains (**the retail range**) and to wholesalers, restaurants, hotels and specialty butchers (**the food services range**).
- (4) Game Farm has stated on its packaging and website that its quail, spatchcock, duck, chicken and turkey are 'range reared' (**the 'range reared representation'**).
- (5) From about 2002 to 2013, the range reared representation appeared on Game Farm's:
 - a. chicken, duck and turkey products in the retail range;
 - b. chicken and duck products in the food services range; and
 - c. website.
- (6) From about 2005 to 2013, the range reared representation appeared on Game Farm's:
 - a. quail and spatchcock products in the retail range; and
 - b. spatchcock products in the food services range.

- (7) The ACCC considers that the range reared representation represents that the birds grown and raised by Game Farm are allowed to spend at least a substantial amount of their time outdoors on an open range.
- (8) Contrary to this representation, the birds grown and raised by Game Farm are grown in commercial sheds with no access to the outdoors.

Contravention of the Act

- (9) The ACCC considers that by reason of the matters in paragraphs 4 to 8 above Game Farm has made representations that are misleading or deceptive, and false, in contravention of sections 18, 29(1)(a) and 33 of the *Australian Consumer Law (ACL)*, consisting of Schedule 2 of the Act.
- (10) Game Farm acknowledges that the conduct described at paragraphs 4, 5 and 6 was likely to have contravened the ACL.
- (11) Upon being made aware of the ACCC's concerns, Game Farm:
 - a. ceased making the range reared representations on all of its products; and
 - b. agreed to resolve the ACCC's concerns by the provision of this undertaking under section 87B of the Act and by the payment of two infringement notices totalling \$20,400 issued by the ACCC under section 134A of the Act.

Commencement of undertaking

- (12) This undertaking comes into effect when:
 - (i) the undertaking is executed by Game Farm; and
 - (ii) the ACCC accepts the undertaking so executed.
- (13) Upon the commencement of this undertaking, Game Farm undertakes to assume the obligations set out in paragraphs 14, 15 and 16 below.

Undertakings

False, misleading and deceptive conduct

- (14) Game Farm undertakes for the purposes of section 87B of the Act, for a period of three years from the commencement of this undertaking:
 - (i) that it will not, and it will ensure that its subsidiaries will not, in trade or commerce:
 - (a) make false, misleading or deceptive representations that products produced and/or supplied by it are of a particular standard, quality, value, grade or composition; and
 - (b) make false, misleading or deceptive representations that products produced and/or supplied by it are range reared.

Corrective Notice to Customers

- (15) Game Farm undertakes for the purposes of section 87B of the Act:
- (i) that it will at its own expense, within 14 days of the date of this undertaking coming into effect, cause to be sent a corrective notice in the form and terms of “**Annexure A**” to this undertaking, to its major regular customers that in total account for approximately 90 per cent of Game Farm’s product sales (**Major Customers**) and under the form of the covering letter at “**Annexure B**”; and
 - (ii) that it will at its own expense within 14 days of the corrective notice being sent to its Major Customers, provide the ACCC with written confirmation that it has sent the corrective notice to its Major Customers along with a copy of the corrective notice and covering letter.

Compliance Program

- (16) Game Farm undertakes for the purposes of section 87B of the Act, for a period of three years from the commencement of this undertaking, that it will:
- (i) establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in “**Annexure C**”, being a program designed to minimise Game Farm’s risk of future breaches of Parts 2.1 and 3.1 of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of Parts 2.1 and 3.1 of the ACL, within 3 months of the date of this Undertaking coming into effect;
 - (ii) maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - (iii) provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure C**.

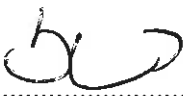
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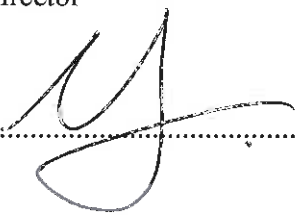
- (17) Game Farm acknowledges that:
- (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC’s public register of s. 87B undertakings on its website;
 - (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements 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

Game Farm Pty Ltd (ACN 001 417 465 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


..... (SCOTT EVANS)
~~Secretary~~/Director


..... (KARL FRASER)
Director

This...²⁴.....day of October 2013

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010*.


.....

Rodney Graham Sims
Chairman

This...^{26th}.....day of October 2013

November RGS

Annexure A

CORRECTIVE NOTICE

False, misleading or deceptive representations

The Australian Competition and Consumer Commission ('ACCC') has advised Game Farm Pty Ltd ('**Game Farm**') that it considers Game Farm has contravened the Australian Consumer Law, consisting of Schedule 2 of the *Competition and Consumer Act 2010*, in that customers were likely to have been misled to believe that birds grown and raised by Game Farm were allowed to spend at least a substantial amount of their time outdoors on an open range, when in fact, the birds were grown in commercial sheds with no access to the outdoors.

Game Farm has stated on its packaging and website that its quail, spatchcock, duck, chicken and turkey are 'range reared' (the '**range reared representation**').

From about 2002 to 2013, the range reared representation appeared on Game Farm's:

- a. chicken, duck and turkey products in the retail range;
- b. chicken and duck products in the food services range; and
- c. website.

From about 2005 to 2013, the range reared representation appeared on Game Farm's:

- d. quail and spatchcock products in the retail range; and
- e. spatchcock products in the food services range.

The ACCC has accepted a court enforceable undertaking from Game Farm (available at www.accc.gov.au). The undertaking requires Game Farm, to provide this corrective notice to its customers and to implement a compliance program to ensure that this kind of conduct does not occur again. Game Farm has also paid two Infringement Notices totalling \$20,400.



Annexure B

[#] October 2013

[#]

Dear [#]

Game Farm Pty Ltd - Corrective Notice

We write to inform you that the Australian Competition and Consumer Commission ('ACCC') has advised Game Farm Pty Ltd ('**Game Farm**') that it considers that customers were likely to have been misled in relation to representations that birds grown and raised by Game Farm were range reared.

Game Farm has agreed to provide its customers with the attached Corrective Notice and to implement a compliance program.

Game Farm will continue to supply you with the highest quality products and we acknowledge your support of our business.

Yours faithfully

[#]

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM

LEVEL 2

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

1. **Appointments**

- 1.1. Within one month of the date of the Undertaking coming into effect Game Farm will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

2. **Compliance Officer Training**

- 2.1. Game Farm will ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on Parts 2.1 and 3.1 of the Australian Consumer Law (**ACL**).
- 2.2. Game Farm shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Game Farm, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

3. **Staff Training**

- 3.1. Game Farm will cause all employees of Game Farm whose duties could result in them being concerned with conduct that may contravene Parts 2.1 and 3.1 of

the ACL to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise trade practices law, that focuses on Parts 2.1 and 3.1 of the ACL.

4. **Complaints handling** – Game Farm will:

4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect; and

4.2. provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

5. Game Farm will ensure that the Compliance Officer reports to their director(s) or governing body every 6 months on the continuing effectiveness of the Compliance Program.

6. **Review** – Game Farm shall, at its own expense, cause an annual review of the Compliance Program elements (**the Review**) to be carried out in accordance with each of the following requirements:

6.1. **Scope of the Review** – Game Farm shall ensure that the Review is broad and rigorous enough to:

6.1.1. provide Game Farm and the ACCC with a supportable verification that Game Farm has in place a Compliance Program that complies with the requirements of the Undertaking and is suitable for the size and structure of Game Farm; and

6.1.2. provide the Review Report and opinions detailed at point 7 below.

6.2. **Independence of Reviewer** – Game Farm shall ensure that the Review is 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:

6.2.1. did not design or implement the Compliance Program;

6.2.2. is not a present or past staff member or director of Game Farm;

- 6.2.3. has not acted and does not act for Game Farm in any trade practices related matters;
 - 6.2.4. has not and does not act for or consult to Game Farm or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 6.2.5. has no significant shareholding or other interests in Game Farm.
- 6.3. **Evidence** – Game Farm shall use its best endeavors to ensure that the Review is able to be conducted on the basis that the Reviewer has access to all relevant sources of information in the Game Farm’s possession or control, including without limitation:
- 6.3.1. enquiries of any employees, representatives, agents and stakeholders of Game Farm; and
 - 6.3.2. documents created by Game Farm’s consultants, legal practitioners and accountants for use in Game Farm’s Compliance Program.
- 6.4. Game Farm 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.

7. Reporting

- 7.1. Game Farm shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in a Compliance Program Review Report, which will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
- 7.1.1. details of the evidence gathered and examined during the Review;
 - 7.1.2. the name and relevant experience of the person appointed as Game Farm Compliance Officer;
 - 7.1.3. the Reviewer’s opinion on whether Game Farm has in place effective staff training, complaints handling programs that comply with the requirements of the Undertaking; and

- 7.1.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Game Farm's Compliance Program.
- 7.2. Game Farm shall ensure that each Compliance Program Review Report is completed and provided to Game Farm within one month of completion of the Review.
- 7.3. Game Farm will cause the Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 7.4. Game Farm 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 Game Farm maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.
8. If requested by the ACCC, Game Farm shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
9. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Game Farm shall, at its own expense and if requested by the ACCC, cause and interim or additional Review to be conducted and cause the resulting Compliance Program Review Report to be provided to the ACCC.