

COMPETITION AND CONSUMER ACT 2010

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

by

CONROYS PTY LTD

ACN 007 822 719

Persons giving this undertaking

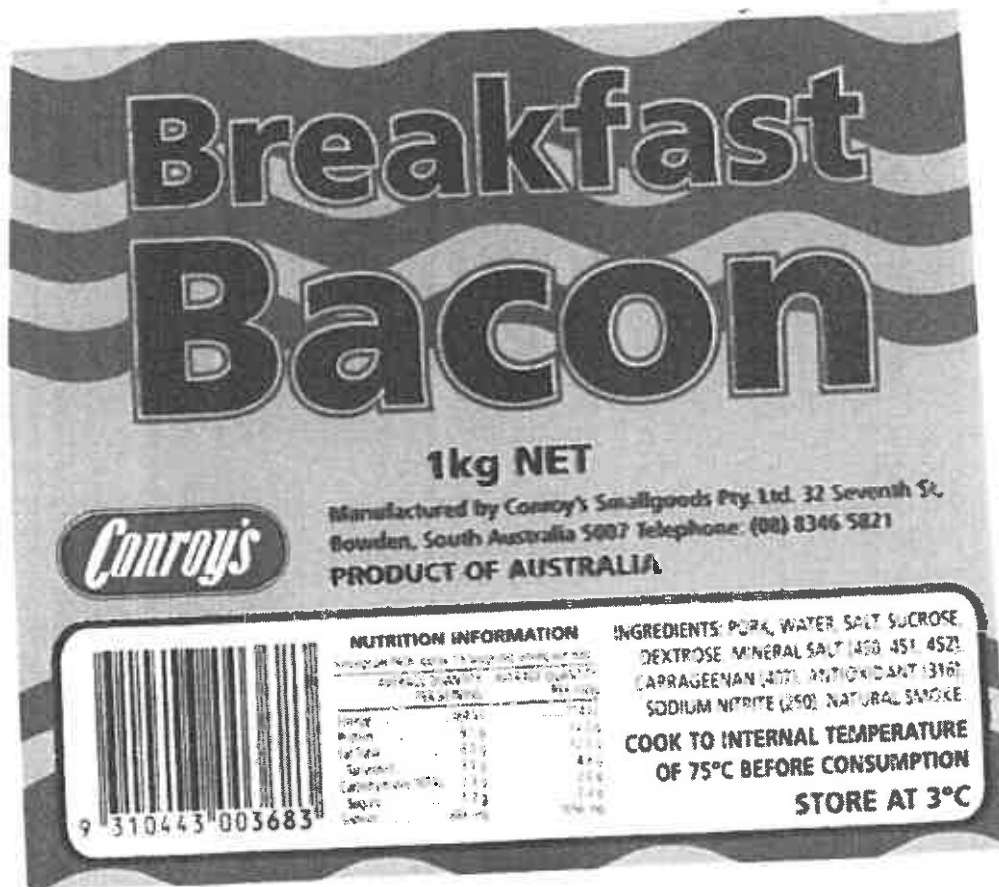
1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Conroys Pty Ltd (ACN 007 822 719) (**Conroys**) of Seventh Street Bowden in South Australia for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

Background

2. Conroys is duly incorporated pursuant to the *Corporations Act 2001* (Cth), is registered in South Australia, and at all material times, carried on business, in trade or commerce.
3. Conroys manufactures and supplies smallgoods such as hams, bacon, and shoulder rolls through:
 - 3.1. its retail store located at its factory at Seventh Street Bowden South Australia;
 - 3.2. Conroys' wholesale customers located in South Australia, Western Australia, Northern Territory, Victoria, Tasmania, and Queensland including:
 - (a) Wholesale distributors
 - (b) Country agents
 - (c) Independent supermarkets, and
 - 3.3. its website, <http://conroys.net.au/>
4. Under the *Quarantine Act 1908*, Conroys has approval to import pig meat and process it for retail sale. The approval requires regular audits of its premises and all imported pig meat must be labelled and traceable to the original consignment from initial receipt, through to packaging and dispatch.

Conduct of concern

5. In February 2015, Conroys supplied the bacon product "Breakfast Bacon – 1kg" (**the Bacon product**) which was labelled as a 'Product of Australia' when in fact the Bacon product was produced using pig meat imported from Denmark. Below is a copy of the label of the Bacon product:



6. The ACCC considers that, by reasons of the matters described in paragraph 5 above, Conroys has:
- 1) engaged in conduct that is misleading or deceptive or is likely to mislead or deceive in contravention of section 18 of the Australian Consumer Law (ACL), and
 - 2) in connection with the supply or possible supply of goods, or in connection with the promotion for the supply of goods, falsely represented that goods were from a particular place of origin in contravention of section 29(1)(k) of the ACL (**Country of Origin Representation**).

Response to investigation

7. The ACCC raised its concerns regarding the labelling of imported pork products as Product of Australia with Conroys. In response Conroys:
- 7.1. Admitted that it supplied the Bacon product which was labelled as a 'Product of Australia' when it was in fact produced with imported pig meat and therefore it did not have a reasonable basis for making the Country of Origin Representation.
 - 7.2. Indicated that the Bacon product was supplied in a one-off shipment of 1020kg to Bremmera Foods (WA), a wholesaler located in East Victoria Park, Western Australia, and that the Bacon product had never been sold as part of Conroys' general product range.

7.3. Indicated that the systems that it had in place to ensure the Bacon product was labelled accurately had failed.

7.4. Co-operated with the ACCC.

Resolution of the ACCC's concerns

8. In order to resolve the ACCC's concerns, Conroys:

8.1. admits its conduct outlined in paragraphs 5 and 6 is likely to have contravened sections 18, and 29(1)(k) of the ACL, and

8.2. indicated a willingness to resolve the matter by the provision of an undertaking under Section 87B of the CCA and by the payment of an Infringement Notice totalling \$10,200 issued by the ACCC under section 134A of the CCA in respect of the Country of Origin Representation.

Commencement of undertaking

9. This undertaking comes into effect when:

9.1. the undertaking is executed by Conroys, and

9.2. the ACCC accepts the undertaking so executed.

10. Conroys undertakes to assume the obligations set out in paragraphs 11 and 12 from the date this undertaking comes into effect.

Undertakings

Conduct

11. Conroys undertakes for the purposes of section 87B of the CCA that for a period of three years, commencing on the date of this undertaking coming into effect it will not, in trade or commerce, represent that any product is the produce of Australia, unless:

11.1. Australia was the country of origin of each significant ingredient or significant component of the product and

11.2. all, or virtually all, processes involved in its production or manufacture happened in Australia.

Corrective Notice

11.3. at its own expense and within 21 days of the date of this undertaking coming into effect, it will publish or cause to be published, the corrective notice set out in **Annexure A** on the website <http://conroys.net.au/> and shall ensure that the corrective notice is:

(a) in colour

(b) viewable immediately on a computer screen upon access to the website

(c) crawlable (i.e. its contents may be indexed by a search engine)

(d) of a size that consists of at least 40% of the images on the screen, and

(e) maintained on the websites for the period of sixty (60) days of the date of this undertaking coming into effect.

Corrective Letter

- 11.4. within 21 days of the date of this undertaking coming into effect, it will send a letter in the terms and form of **Annexure B** to Bremmera Foods (WA).

Verification

- 11.5. within five business days of any request from the ACCC, it will provide to the ACCC at its own expense, information and documentation verifying it has carried out its obligations in paragraphs 11.1 to 11.4 above.

Competition and Consumer Compliance Program

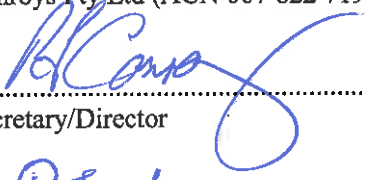
12. Conroys undertakes for the purposes of section 87B of the CCA that it will:
 - 12.1. implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure C** for the employees or other persons involved in Conroys' business as listed in paragraph 2 of Annexure C, being a program designed to:
 - (a) minimise Conroys' risk of breaches of the following provisions of the ACL:
 - i. Part 2-1 (Misleading or deceptive conduct), in particular section 18, and
 - ii. Part 3-1, Division 1 (False or misleading representations), in particular section 29
 - (b) ensure Conroys is aware of its responsibilities and obligations in relation to the above provisions of the ACL,
 - (c) ensure Conroys is aware of Part 5-3 of the ACL relating to country of origin representations
 - 12.2. maintain and continue to implement the Compliance Program for a period of three years from the date of this undertaking coming into effect, and
 - 12.3. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure C**.

Acknowledgments

13. Conroys acknowledges that:
 - 13.1. 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
 - 13.2. the ACCC may, from time to time, make public reference to the undertaking including in news media statements and in ACCC publications, and
 - 13.3. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

Conroys Pty Ltd (ACN 007 822 719) pursuant to section 127(1) of the *Corporations Act 2001*.


.....
Secretary/Director


.....
Director

This...24...day of...July...2015

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


.....

Rodney Graham Sims
Chairman

This...19...day of...8...2015

ANNEXURE A
Corrective Notice

CORRECTIVE NOTICE



In around February 2015, Conroy's made false or misleading representations by labelling and supplying the product "Breakfast Bacon – 1kg", as a 'Product of Australia' when this product was made from imported pig meat.

It was supplied in a shipment of 1020kg to Bremmera Foods (WA), a wholesale distribution company located in East Victoria Park WA.

Conroy's admits that representing that this product was a Product of Australia was false or misleading.

Following concerns raised by the ACCC, Conroy's has:

- a) Paid an Infringement Notice of \$10,200, and
- b) Provided a court enforceable undertaking to the ACCC to ensure that similar conduct will not occur again.

The undertaking (available at www.accc.gov.au) requires Conroy's to publish various corrective notices, and to implement a compliance program.



**Australian
Competition &
Consumer
Commission**

Corrective Notice placed by Conroy's Pty Ltd pursuant to an undertaking accepted by the ACCC

ANNEXURE B

LETTER TO BREMMERA FOODS (WA)

[Conroys Pty Ltd logo and letterhead]

[Date]

[To Bremmera Foods (WA)]

Dear Sir / Madam [or personalise],

Misrepresentations regarding Breakfast Bacon

Following an investigation by the Australian Competition and Consumer Commission (ACCC), Conroys Pty Ltd (**Conroys**) has admitted that the "Breakfast Bacon – 1kg" product, supplied to you in February 2015, was not a "Product of Australia" as indicated on the label but was instead made from imported pig meat.

Conroys' conduct is likely to have contravened the Australian Consumer Law (ACL) (which is contained in schedule 2 of the *Competition and Consumer Act 2010*). The ACL prohibits misleading, deceptive and otherwise false trading practices.

In relation to this matter, Conroys has provided the ACCC with a court enforceable undertaking and paid an Infringement Notice of \$10,200. Full details of the undertaking can be found on the ACCC's website: www.accc.gov.au.

Conroys apologises for making this false representation.

If you are still in possession of this stock, you should cease selling it with the "Product of Australia" labelling.

Alternatively, please contact [director name] on [director's contact telephone number] for information on how to return that stock.

Yours sincerely,

[Director or manager of Conroys Pty Ltd]
Conroys Pty Ltd

Att.

[Attach corrective notice at Annexure A.]

ANNEXURE C

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

Conroys will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within two months of the undertaking coming into effect, Conroys 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**).

Training

2. Within two months of this undertaking coming into effect, and thereafter at least once a year for three years, the Compliance Officer, all directors, and all officers and employees, representatives and agents for Conroys whose duties could result in them being concerned with conduct that may contravene Part 2-1 and Part 3-1 of the Australian Consumer Law (ACL) will attend practical training focusing on sections 18 and 29, as well as Part 5-3 (Country of Origin representations) of the ACL.
3. Conroys will ensure that the training referred to in paragraph 2 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (**the Trainer**).

Implementing adequate compliance systems

4. Conroys will ensure that it implements and maintains adequate compliance systems to ensure that any country or place of origin representations it makes are accurate, made on a reasonable basis and are able to be verified.

Compliance Review

5. Conroys will, at its own expense, cause a review of the Compliance Program (**the Review**) to be carried out in accordance with each of the following requirements:

5.1 **Scope of Review** – the Review should be broad and rigorous enough to provide Conroys with:

- 5.1.1 verification that Conroys has in place a Compliance Program that complies with the requirements of the undertaking and is suitable for the size and structure of Conroys;
- 5.1.2 the Compliance Reports detailed at paragraph 6 below.
- 5.2 **Independent Reviewer** – Conroys will ensure that each Review is carried out by a suitably qualified, independent compliance professional with expertise in competition and consumer law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
 - 5.2.1 did not design or implement the Compliance Program;
 - 5.2.2 is not a present or past staff member or director of Conroys;
 - 5.2.3 has not acted and does not act for, and does not consult and has not consulted to, Conroys in any competition or consumer law related matters, other than performing Reviews under this undertaking, and
 - 5.2.4 has no significant shareholding or other interests in Conroys.
- 5.3 **Evidence** - Conroys will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in the Conroys's possession or control, including without limitation:
 - 5.3.1 the ability to make enquiries of any officers, employees, representatives, and agents of Conroys;
 - 5.3.2 documents relating to Conroys' Compliance Program, including documents relevant to Conroys' Complaints Handling System, and competition and Staff Training;
 - 5.3.3 any reports made by the Compliance Officer to Conroys' governing body regarding Conroys' Compliance Program.
- 5.4 Conroys will ensure that a Review is completed within one year of this undertaking coming into effect and that a subsequent review is completed six months prior to the expiry of the undertaking.

Compliance Reports

- 6. Conroys will use its best endeavours to ensure that within [14] days of a Review, the Reviewer includes the following findings of the Review in a report to Conroys (**the Compliance Report**):
 - 6.1 whether the Compliance Program of Conroys includes all the elements detailed in paragraphs 2 above, and if not, what elements need to be included or further developed;

6.2 whether the Staff Training is effective, and if not, what aspects need to be further developed;

6.3 whether there are any material deficiencies in Conroys' Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying the Material Failure/s¹.

Conroys Response to Compliance Reports

7. Conroys will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

Reporting Material Failures to the ACCC

8. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Conroys will:

8.1 provide a copy of that Compliance Report to the ACCC within [14] days of Conroys' receiving the Compliance Report; and

8.2 inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or

8.3 otherwise outline the steps Conroys proposes to take to implement the recommendations and will then inform the ACCC once those steps have been implemented.

Provision of Compliance Program documents to the ACCC

9. Conroys will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than [5 years – being the number of years compliance training is required and an additional 2 years following that period].

10. Conroys will, at its own expense, if requested by the ACCC, provide to the ACCC copies of all documents and information in respect of matters that are the subject of this Compliance Program

ACCC Recommendations

11. Conroys will implement promptly and with due diligence any recommendations that the ACCC may make that the ACCC deems reasonably necessary to ensure that Conroys maintains and continues to implement the Compliance Program in accordance with the requirements of this undertaking.

¹ Material Failure means a failure, that is non-trivial and which is ongoing or continued for a significant period of time, to:

- Incorporate a requirement of the undertaking in the design of the Compliance Program, for example if a Complaints Handling System did not provide any mechanism for responding to complaints; or
- Comply with a fundamental obligation in the implementation of the Compliance Program, for example, if no Staff Training has been conducted within the Annual Review period