

# Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Anchor Foods Pty Ltd (ACN 101 088 626) trading as Spencers Gourmet Trading.

## 1. Person(s) giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Anchor Foods Pty Ltd (ACN 101 088 626) trading as Spencers Gourmet Trading (Spencers), for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (CCA).

## 2. Background

- 2.1 Spencers is incorporated in Australia and is based in Western Australia. It specialises in the sale of grocery foods and in particular herbs and spices.
- 2.2 Spencers is a distributor of oregano in Australia and supplies to major retailers in Western Australia. Its oregano sales volume in 2015 was 100,000 units. During the relevant period, Spencers acquired its oregano from Spice Masters Australia Pty Ltd.

### The conduct

- 2.3 During 2015, Spencers made representations through statements on the packaging of its oregano product that the product contained only oregano. These statements included the text 'Oregano' on the front of the package and the text on the back of the package which says 'Closely related to marjoram, oregano is a small perennial (*Origanum vulgare*), native to the Mediterranean region where it has been cultivated since ancient times...'. The product packaging also states the oregano product is 'packed on the same equipment as sesame seeds'. Photographs of the front and back of the product are at **Annexure A**.
- 2.4 Tests conducted by Queen's University Belfast's Institute for Global Food Security indicate that Spencers' oregano product contained ingredients other than oregano. The test results indicated the substantial presence of olive leaves.
- 2.5 The ACCC considers that, by reason of the matters described in paragraphs 2.1 to 2.4, Spencers has, 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 29(1)(a) of the Australian Consumer Law (ACL).
- 2.6 Spencers accepts that labelling used in these circumstances was likely to mislead customers.

### Response to investigation

- 2.7 The ACCC raised its concerns regarding the sale of Spencers' oregano product with Spencers. In response, Spencers notified the ACCC that it had taken the following steps:
  - (a) issued a public statement apologising to concerned consumers that Spencers on sold product that was not to specification;
  - (b) offered to concerned consumers, a refund or replacement product;



- (c) contacted its supplier to trace the adulterated batch of product in order to prepare for a recall from supermarkets and to validate alternative supply of pure oregano;
- (d) began a detailed review of the supply chain for all Spencers herb and spice products;
- (e) responded to an ACCC letter of request for further information regarding the supply chain for herb and spice products, in particular oregano;
- (f) worked with supermarket retailers to trace and recover suspected adulterated batches; and
- (g) developed a new testing regime where Spencers works with suppliers to conduct routine challenge testing validating product provenance.

Resolution of the ACCC's concerns

2.8 In order to resolve the ACCC's concerns, Spencers has indicated its willingness to resolve the matter by the provision of an undertaking under section 87B of the CCA.

**3. Commencement of this Undertaking**

3.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by Spencers; and
- (b) this Undertaking so executed is accepted by the ACCC.

3.2 Upon the commencement of this Undertaking, Spencers undertakes to assume the obligations set out in paragraph 4 for the purposes of section 87B of the CCA.

**4. Undertaking**

4.1 Spencers undertakes that, for a period of three years, commencing on the date of this Undertaking it will:

- (a) annually, obtain written evidence from an internationally accredited testing laboratory, which confirms that the laboratory has tested one sample of the product supplied and represented by Spencers as only oregano and found each sample was a product containing only oregano;
- (b) establish and implement a process for annual testing of the composition of random samples of herb or spice products supplied by Spencers, other than oregano, to ensure compliance with the ACL and in particular, to ensure composition representations are accurate. Such testing must be conducted on at least five different products each year by an internationally accredited testing laboratory; and
- (c) retain for three years the test results obtained under sub-paragraphs 4.1(a) and (b), and if requested, provide the ACCC with a copy of those test results.

**5. Acknowledgments**


5.1 Spencers acknowledges that:

- (a) 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;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

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**Executed as an Undertaking**

Executed by Anchor Foods Pty Ltd (ACN 101 088 626) pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:

	
Signature of director ^ sole	Signature of a director/company secretary (delete as appropriate)
DAVID THOMAS CLAPIN	
Name of director (print)	Name of director/company secretary (print)
Date 12 <sup>th</sup> DECEMBER 2016	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

and signed on behalf of the Commission:



Chairman

15/12/16

Date

PHOTOGRAPHS OF SPENCERS' OREGANO



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## OREGANO

Closey related to marjoram, oregano is a small perennial (*Origanum vulgare*), native to the Mediterranean region where it has been cultivated since ancient times.

The name oregano comes from the Greek words oros and ganos meaning 'joy of the mountain', describing the pleasant aroma and appearance of the herb growing on Greek hillsides.

Oregano has a heady, warm aroma and a pleasant, slightly musty flavour, stronger than that of marjoram. It combines well with basil in pizza toppings and pasta dishes. It is also used in marinades, pizza toppings, meat dishes and stuffing. ©

Spencers

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Packed on the same equipment as sesame seeds.

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