

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B****BY****A.U AGENCY (AUSTRALIA) PTY LTD
A.C.N. 009 428 693****BACKGROUND**

1. A.U Agency (Australia) Pty Ltd trading as CountryFresh ('CountryFresh') is incorporated in the State of Western Australia and its principal activities include the production and distribution of fruit juices.
2. CountryFresh produces and distributes in Perth a long life orange juice product, CountryFresh 100% orange juice ('the product'). The product is made from fruit juice concentrate and is sold in two litre glass bottles. The product carries the label 'Product of Australia' and 'Ingredients: Reconstituted Australian orange juice'.
3. In June 1996, the Australian Citrus Industry Council ('ACIC'), as part of its role in monitoring the fruit juice industry, advised CountryFresh that Australian Government Analytical Laboratories (AGAL) tests on the product identified trace elements of imported product. In November 1996 ACIC advised Country Fresh that tests carried out on a further sample of the product identified trace elements of imported juice. In December 1996 ACIC purchased and tested another sample of the product and again trace elements of imported juice were detected.
4. The ACIC was unable to resolve the matter with CountryFresh and referred the matter to the Australian Competition and Consumer Commission ('the Commission'). Following approaches by Commission staff, on 8 May 1997, CountryFresh advised the Commission that the product was now being labelled 'Ingredients: Reconstituted Australian and Imported Orange Juice' and stocks of the old label had been exhausted.
5. On 28 May 1997 Commission staff visited retailers in Perth and established the product on sale and labelled 'Product of Australia' and 'Ingredients: Reconstituted Australian orange juice'. On 17 June and 5 July 1997 Commission staff again visited stores in Perth and discovered the product was still on sale under the label 'Ingredients: Reconstituted Australian orange juice' and 'Product of Australia'.
6. The Commission considers that the statements 'Product of Australia' and 'Reconstituted Australian orange juice' are false representations concerning the place of origin of the product and contravenes section 53(eb) of the *Trade Practices Act 1974* (the 'Act'). The Commission also considers that the use of the words 'Product

of Australia' and 'Reconstituted Australian orange juice' to describe the product is misleading conduct and contravenes section 52 of the Act.

7. CountryFresh acknowledges that the product was made from Australian and Imported concentrate and consequently that it has breached sections 52 and 53(eb) of the Act.

UNDERTAKINGS

8. CountryFresh gives the following undertakings to the Commission for the purpose of section 87B of the Act. CountryFresh undertakes that:

- (a) (i) it will implement procedures to ensure the removal, by no later than 15 August 1997, of the statements 'Product of Australia' and 'Ingredients: Reconstituted Australian orange juice' from all stock of the product, including all stock currently available for purchase in the marketplace;
- (ii) it will, by its sales staff or other servants or agents, complete a cycle of attendances upon those retailers, by no later than 1 September 1997, to ensure that the product has been withdrawn from sale or the statements 'Product of Australia' and 'Ingredients: Reconstituted Australian orange juice' erased from the labels on the product;
- (b) it will not in the future represent that Australia is the place of origin of the product unless the concentrate from which it is made consists exclusively of Australian fruit juice;
- (c) within 7 days of the Commission's acceptance of this undertaking, it will request retailers to display a notice, to be of the minimum size of 12cm x 12cm, in the form annexed at Attachment A, at the point of sale of the product for a period of 10 days;
- (d) it will, no later than 22 August 1997, provide a written report to the Commission:
 - (i) confirming that the statements 'Product of Australia' and 'Ingredients: Reconstituted Australian orange juice' have been removed from all labels on the product;
 - (ii) detailing the retail outlets where
 - (a) the product was sold; and
 - (b) the notice was displayed.
- (e) to introduce a trade practices compliance program to cover all directors, employees and agents of CountryFresh whose duties could result in conduct that might breach the Act.

ACKNOWLEDGMENTS

- 9. CountryFresh acknowledges the Commission's right to make this undertaking available for public inspection.
- 10. CountryFresh acknowledges that the Commission may issue a media release in relation to this undertaking and may from time to time publicly refer to the undertaking.
- 11. CountryFresh acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS OF THIS UNDERTAKING

This 1 day of *AUGUST* 1997

THE COMMON SEAL of)
A.U Agency (Australia) Pty Ltd)
was affixed in accordance with)
its Articles of Association:)



[Signature]
.....
Director/Secretary

[Signature]
.....
Director

J. Lucas
.....
Name (printed):

S. BUONGIORNO
.....
Name (printed):

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

[Signature]
Chairperson

This 10 day of *September* 1997

ATTACHMENT A

APOLOGY

CountryFresh

CountryFresh wishes to advise consumers that it may have contravened the Trade Practices Act by representing that CountryFresh 100% orange juice (pasteurised) was made from Australian fruit juices. In fact, concentrate containing Australian and Imported juice was used to manufacture the product.

Following discussions with the Australian Competition and Consumer Commission, CountryFresh has agreed to change labelling to ensure that statements describing the place of origin are accurate.

CountryFresh apologises to consumers and offers a full purchase price refund on return of the product and purchase receipt to any consumer who was misled by the incorrect labelling.

Please contact 9362 1088 for more information