

UNDERTAKINGS

These undertakings are given to the Australian Competition and Consumer Commission (the *Commission*) by Riviana Foods Pty Limited (A.C.N. 061 388 092) (*Riviana*) under section 87B of the Trade Practices Act 1974.

BACKGROUND

1. Riviana is a proprietary company and carries on business predominately as a food importer. Riviana's product range covers in excess of 300 products from various countries around the world. Riviana's annual turnover is around \$53 million.
2. Riviana imports both raw and finished goods. Some raw goods are packaged under various brands and others used for further processing. Riviana also imports finished goods which are already labelled and ready for sale. As well as handling imported goods, Riviana packages and distributes local Australian produce. In some cases, local raw product is combined with imported raw product for further processing.
3. Riviana packs and distributes Australian grown white long grain rice under the Mahatma brand. Australian grown long grain rice is sourced from the Ricegrowers Co-operative Limited in Leeton, New South Wales. The 1996 Australian rice crop, harvested in March, April, May and June 1996 was severely affected by drought conditions and the yield was lower than expected. In order to supplement supply, Riviana commenced importing white long grain rice from Thailand in September 1996.
4. Between September 1996 and May 1997, Riviana imported 2.31 million kilos of bulk white long grain rice and 546,000 kilos of prepacked white long grain rice. The white long grain imported in bulk was repacked by Riviana at its Rowville plant into 500 gram, 1 kilo, 2 kilo and 10 kilo bags. The Mahatma brand packaging used by Riviana was labelled "Packed in Australia from imported rice". The prepacked white long grain rice was imported in 10 kilo and 25 kilo bags which were labelled "Product of Thailand".
5. In March 1997, Riviana exhausted its supplies of Mahatma brand packaging labelled "Packed in Australia from imported rice" or "Product of Thailand". From late March to the end of May 1997 Riviana repackaged some white long grain rice imported from Thailand into 2 kilo and 10 kilo size bags using Mahatma brand packaging labelled "Product of Australia".
6. The Commission alleges that in packaging imported white long grain rice into bags labelled "Product of Australia", Riviana:
 - (a) engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 52 of the Trade Practices Act 1974 (Cth) (the *Act*);
 - (b) falsely represented that white long grain rice imported from Thailand was a product of Australia, in contravention of section 53(eb) of the Act.

7. In May 1997, the Commission received complaints regarding Riviana's conduct and it commenced making inquiries. As a result, the Commission advised Riviana that its conduct from late March to the end of May 1997 was likely to breach sections 52 and 53(eb) of the Act.
8. Following inquiries from the Commission, Riviana admitted to engaging in conduct that would constitute contraventions of sections 52 and 53(eb) of the Act during the period from late March to the end of May 1997.
9. Riviana gives these undertakings to the Commission under section 87B of the Act to address the Commission's concerns, particularly the concern that consumers purchasing goods labelled "Product of Australia" expect that these goods will be Australian made or grown and not imported.
10. In requiring Riviana to provide these undertakings, the Commission has taken into account that Riviana did not benefit financially or competitively from the conduct. In addition, Riviana has undertaken, at substantial cost, extensive remedial action to recall and replace incorrectly labelled stock and has provided refunds to consumers where required. Riviana has provided the Commission with prompt and extensive co-operation in its investigations of this matter.

UNDERTAKINGS

1. FUTURE CONDUCT

Riviana undertakes not to engage in misleading or deceptive representations, namely that imported food products, or food products processed primarily from imported materials, are labelled as "Product of Australia" in contravention of sections 52 and 53(eb) of the Trade Practices Act.

2. PUBLIC DISCLOSURE AND INDUSTRY COMPLIANCE

2.1 Riviana undertakes to place a 8cm X 2 column (or the nearest available size) advertisement in the form set out in Schedule A to these undertakings, on:

- (a) Saturday 27 September 1997; and
- (b) Wednesday 1 October 1997;

in the following major metropolitan newspapers:

the Sydney Morning Herald,
the Melbourne Age,
the Brisbane Courier Mail,
the Hobart Mercury,
the Canberra Times,

the Telegraph,
the Herald Sun

Riviana is to ensure that the advertisement which is to be placed on the dates outlined above is placed in the general business pages of the relevant newspapers outlined above.

- 2.2 Riviana undertakes to implement and fund an information page which is to be in the form set out in Schedule B to these undertakings. This information page is to be placed by Riviana in industry magazines so as to promote a greater awareness of the general provisions of the Act. The information page will have particular emphasis being placed on the need for directors of companies to be aware of all their obligations under the Act as to country of origin, and for labelling decisions generally. This information page is to appear in the relevant industry magazines listed below no later than 30 November 1997.

Food & Pack,
Food Processor,
Food Service News,
Food and Beverage Importers Association Newsletter.

- 2.3 Riviana undertakes to institute an independently oversighted Trade Practices Corporate Compliance Program ("Compliance Program") for management and employees within the timeframe specified in Schedule C. The Compliance Program will include the features specified in Schedule C to these undertakings.

3. EFFECTIVE DATE

These undertakings will be effective forthwith.

4. ACKNOWLEDGMENTS

- 4.1 Riviana accepts that these undertakings are a public document which will be placed on the Commission's public register and that the Commission may otherwise publish and refer to this document at its discretion.
- 4.2 Riviana accepts that these undertakings in no way derogate from the rights or remedies available to any person arising from the alleged conduct.

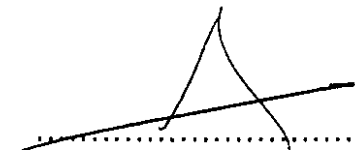
SCHEDULES

- A. Riviana advertisement
- B. Riviana information page
- C. Trade Practices Compliance Program

Executed on 22nd September 1997

SIGNED for and on behalf of RIVIANA)
FOODS PTY LIMITED by its)
authorised representative)
in the presence of:)

x Margaret Tuskin
.....
Witness


.....
Authorised Representative

x Margaret Tuskin
.....
Print Name

D.K. PARTELOVIC
.....
Print Name

ACCEPTED BY THE AUSTRALIAN)
COMPETITION AND CONSUMER)
COMMISSION)

Jamie Gratton
.....
Witness


.....
Authorised Representative

TANIA GRATION
.....
Print Name

ALLAN FELLS
.....
Print Name

SCHEDULE A

APOLOGY

**RIVIANA FOODS PTY LTD
MAHATMA WHITE LONG GRAIN RICE**

Following discussions with the Australian Competition and Consumer Commission, Riviana wishes to advise its customers that during the period from late March until late May 1997, some packs in the 2 kilo and 10 kilo sizes of Mahatma brand white long grain rice contained rice imported from Thailand and not rice grown in Australia.

The need to import rice from Thailand arose as a result of unseasonal climatic conditions which severely reduced the available quantities of Australian rice.

The labels of these Mahatma packets indicated that the rice was grown in Australia in breach of sections 52 and 53(eb) of the Trade Practices Act.

Section 52 prohibits a company from engaging in misleading or deceptive conduct. Section 53(eb) prohibits a company from making a false or misleading representation as to the country of origin of goods.

Riviana apologises for misleading purchasers and for any inconvenience that this may have caused.

If customers have any queries regarding this matter please ring Riviana on phone no. 9764 3622.

This advertisement appears at the request of the Australian Competition and Consumer Commission.

SCHEDULE B

MESSAGE TO ALL DIRECTORS OF COMPANIES INVOLVED IN THE FOOD INDUSTRY

Australian processed food manufacturers are governed by a number of industry specific guidelines and codes of practice. However, it is important to remember that these guidelines and codes of practice do not operate to the exclusion of the provisions of Federal and State legislation.

Riviana Foods Pty Ltd packs and distributes Australian grown white long grain rice under the Mahatma brand name. During 1996/97, the yield from the Australian rice crop fell short of expectations and Riviana imported rice from Thailand to supplement the shortfall. Between the end of March and late May 1997, Riviana repackaged the long grain rice it imported from Thailand using, in some instances, the same Mahatma brand packaging it used when packaging Australian grown long grain rice. This packaging was marked "Product of Australia". Under the Trade Practices Act 1974 ("the Act") it is prohibited to falsely represent the country of origin of goods. By not changing the wording of the label on the packaging to indicate that the rice was "Product of Thailand", Riviana breached certain provisions of the Act.

The lesson to be learnt is that whilst we in the food industry seek to adhere to our own codes and industry standards it is imperative that once these regulatory points have been covered off that as a final step, the Trade Practices Act is also covered off to ensure that there is no breach or potential for breach.

The Act applies to all businesses in Australia engaged in trade or commerce and where the provisions of the Act are breached, severe pecuniary penalties or fines may be imposed on business entities *and* individuals. Thus Directors of business need to be aware of the obligations imposed on their companies under the provisions of the Act and the potential for them to be personally liable for decisions they make.

An effective way of ensuring compliance with the Act is to use the ACCC's "*Best and Fairest*" training package.

Compliance programs not only reduce the risk of contravening the Act, but they may also reduce the effect and consequences of breaches. Compliance is good from both the customer goodwill and company reputation viewpoint.

As part of its compliance program Riviana has purchased the ACCC's *Best and Fairest* training package. This package is available from the ACCC for \$400.

Other relevant points in day to day business that can be encountered and are relevant to the Act are :

Don't omit important or relevant details in your advertising.

Don't mislead or deceive customers by issuing or using incorrect or ambiguous statements and labels.

Don't agree with your competitors about commercial matter such as price.

Don't take part in the collective boycott of any client by industry participants.

Don't attempt to impose minimum resale prices.

Don't initiate any exclusive dealing arrangement which substantially lessens competition in any market.

Don't misuse your market power to remove a competitor or reduce competition in any market.

Don't take advantage of a customer's ignorance to secure a deal.

Further information on the Trade Practices Act can be obtained from :

**THE AUSTRALIAN COMPETITION
AND CONSUMER COMMISSION**

SCHEDULE C

TRADE PRACTICES CORPORATE COMPLIANCE PROGRAM

The Trade Practices Corporate Compliance Program ("the Program") to be undertaken by Riviana Foods Pty Ltd ("Riviana") will have the following features.

Riviana will place responsibility for the implementation of the Program with its Deputy Chief Executive Officer. The Program will be implemented within two calendar months of this order.

Riviana will appoint its Deputy Chief Executive Officer as its Trade Practices Compliance Officer. The Trade Practices Compliance Officer will be appointed within two calendar months of this order.

Riviana will require the Trade Practices Compliance Officer to review all food product label designs, whether for imported or local produce, to ensure that they comply with the *Trade Practices Act 1974* (Cth).

Riviana will require the Trade Practices Compliance Officer to maintain a documentary record of the compliance reviews of all food product labels. Such documentary record will include:

- a description of the food product label;
- a copy of the food product label;
- written advice that the food product label has been reviewed and cleared by the Trade Practices Compliance Officer (including the date on which the food product label was reviewed);
- written advice of any possible contraventions of the *Trade Practices Act* that were identified by the Trade Practices Compliance Officer and the action taken to address these possible contraventions.

Riviana will ensure that the compliance program includes a specific reference to the duty of care of Company Directors in respect of the provisions of the *Trade Practices Act*.

- (i) Riviana will ensure that the documentary records of the compliance reviews of all food product labels are available to the Australian Competition and Consumer Commission to be reviewed from time to time. Such records will be available from one week after the date of use of the food product label for a period of 3 years after that date. Such records will be provided to the Australian Competition and Consumer Commission within 5 working days of a written request for those records.

Riviana will ensure that, prior to implementation of the Program, the processes which Riviana intends to implement in order to comply with the Program are approved by a firm of solicitors with expertise in trade practices law.

- (ii) Riviana will ensure that a firm of solicitors with expertise in trade practices law conducts training on the *Trade Practices Act* to all Riviana management and staff on five occasions during the 3 year period following the making of this order. The first of these training programs will be completed within 3 calendar months of this order and the remaining five on a six monthly basis thereafter.

- (iii) Riviana will retain a firm of solicitors with expertise in trade practices law to provide the Australian Competition and Consumer Commission with two annual reports (being at 12 months and 24 months following the making of this order) on Riviana's compliance with the Program, and these reports will be provided to the Australian Competition and Consumer Commission within:

13 months of this order; and
25 months of this order,

respectively.