

**TRADE PRACTICES ACT 1974**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

**BY  
GOLDEN CIRCLE LIMITED  
A.C.N. 054 355 618**

**BACKGROUND**

1. Golden Circle Limited ("Golden Circle") is a public company incorporated in Queensland carrying on business and engaging in trade and commerce, inter alia, as a processor of fruit and vegetables in Australia. Golden Circle's product range is extensive having over 340 product lines and its name is well recognised by consumers in Australia.
2. It is Golden Circle's practice to label its products by reference to and drawing upon its relationship with Australia. Examples of this labelling include use of the following representations:-
  - *Australian Grown*
  - *Australian Made*; and
  - *Made in Australia* ("the country of origin representations")
3. On 26 March 1998 the Commission received a complaint regarding the use by Golden Circle of some of the country of origin representations on a product which also contained a representation that the product was *made from quality local and imported ingredients subject to seasonal availability*. The product complained of was Golden Circle's one litre tetra brik orange juice.
4. As a result of this complaint the Commission wrote to Golden Circle seeking details of the relative proportions of Australian and imported concentrate used by Golden Circle to produce its orange drink and juice products. The Commission also sought details of any other product which was labelled in a fashion similar to the product complained of.
5. Golden Circle has advised the Commission that for the period 1995 to 1997 inclusive it has used certain amounts of imported orange and apple concentrate in the production of its orange and apple drink products. In particular Golden Circle advised the Commission that the percentage of imported orange and apple concentrate used over this period were as follows:-

***Orange Concentrate***

<b>Period</b>	<b>Imported Concentrate %</b>
1995	22.7
1996	80.4
1997	70.2

***Apple Concentrate***

<b>Period</b>	<b>Imported Concentrate %</b>
1995	43
1996	42
1997	25

6. Golden Circle has also stated where it is unable by reason of deficiencies in production when compared to average production years to source sufficient supply of Australian produce to make a product, overseas markets are accessed to supplement this shortfall. In these circumstances it is Golden Circle's usual practice to label such products with a qualification that the product is *Subject to Seasonal Availability*.
7. As a result of the information referred to in paragraph 5 herein the Commission formed the view Golden Circle's use of the country of origin representations in respect of its relevant orange and apple juice and orange drink products would contravene the *Trade Practices Act 1974* ("the Act"). The Commission considers the description of the products would cause consumers to believe the products were made from Australian produce. This was not the position with respect to Golden Circle's orange and apple juice and orange drink products.
8. As a result of the information referred to in paragraphs 5 and 6 herein the Commission formed the view that Golden Circle's use of the *Subject to Seasonal Availability* representation in respect of its relevant orange and apple drink products would have contravened the *Trade Practices Act 1974* ("the Act"). The Commission considers use of this representation would lead consumers to believe that Golden Circle would use Australian produce so far as available but where such supply was interrupted or diminished on a short term basis, then it would be supplemented by overseas produce. This was not the case with respect to Golden Circle's orange and apple drink products as the use of the imported juices occurred over a period of three consecutive years and any shortfall in Australian production would not have been unexpected.
9. Accordingly, the Commission considers Golden Circle's conduct contravenes sections 52 and 53(eb) of the 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

10. Golden Circle gives these undertakings to the Commission under section 87B of the Act to address the Commission's concerns, and especially the concern that consumers purchasing these products would have expected them to have been Australian made or not imported.
11. In accepting these undertakings from Golden Circle, the Commission has noted Golden Circle has undertaken to:-
  - review and change, where necessary, the labelling of its products to ensure the representations made do not mislead or deceive consumers;
  - publish an Australia wide corrective notice and explanation to consumers in respect of its conduct; and
  - implement a trade practices corporate compliance program to better ensure the situation which has been drawn to its attention by the ACCC is rectified and does not recur.

The Commission notes Golden Circle has provided it with prompt cooperation in its investigation and resolution of this matter.

## **UNDERTAKINGS**

### **1. FUTURE CONDUCT**

- 1.1 Golden Circle undertakes not to package its goods with false or misleading representations as to the country of origin and or *seasonal availability* of its products contrary to sections 52 and 53(eb) of the Act for a period of three years from the date of the signing of this undertaking.
- 1.2 Golden Circle further undertakes not to package its products which contain representations that would mislead or deceive consumers as to the product's relative percentages of imported and local ingredients contrary to the provisions of the Act for a period of three years. Where a product is constituted by imported and local ingredients Golden Circle undertakes that the order of words relating to any representation as to the sources of composition will be expressed by reference to the descending order of volume/quantity of the imported and local element.
- 1.3 As part of its commitment to the undertakings given in paragraphs 1.1 and 1.2 above Golden Circle will immediately review all its product lines to ensure any country of origin representation and the *subject to seasonal availability* representation appear only on those products in respect of which such claims can be made without contravening the Act. Golden Circle undertakes to effect any necessary changes to its labelling within four months of the signing of this document.

## **2. CORRECTIVE NOTICE**

- 2.1 Golden Circle undertakes to place a 15cm x 15cm (or the nearest available size) notice in the form set out in Schedule A to these undertakings within twenty-one days or such other period as may be agreed upon by the Commission in the following major metropolitan newspapers:

the Sydney Morning Herald,  
the Melbourne Herald Sun  
the Brisbane Courier Mail,  
the Adelaide Advertiser,  
the West Australian,  
the Hobart Mercury,  
the Canberra Times,  
the Northern Territory News.

Golden Circle is to ensure the notices which are published appears in the first 6 pages of the relevant week day edition of the newspaper outlined above. Golden Circle is also to ensure the font size for the text is not less than 10 point.

## **3. CORPORATE COMPLIANCE PROGRAMME**

Golden Circle shall create and maintain at its own expense a trade practices compliance program. In implementing this compliance program, Golden Circle will have regard to the Australian Standard AS 3806 Compliance Programs.

In summary, Golden Circle will -

- Demonstrate commitment to a policy of compliance and embed a culture of compliance throughout the organisation.
- Analyse and respond to the trade practices matters resulting in this undertaking.
- Identify risk areas for trade practices breaches and develop systems to eliminate or minimise these risks.
- State that the company will take action internally against those responsible for breaches and will not indemnify them.
- Provide practical and verifiable training for all relevant staff and management so that breaches and potential breaches may be prevented or otherwise detected, referred and acted upon.

## **4. IMPLEMENTATION**

Golden Circle will commence to develop and implement the trade practices compliance program within one month of acceptance of these undertakings, and will implement the program fully within three months.

In particular, Golden Circle shall implement the following steps -

### **1. Commitment**

- A. Appoint a Compliance Manager or Senior Manager with overall responsibility for compliance systems.
- B. Implement adequate procedures to check for trade practices compliance.
- C. Ensure compliance procedures are understood by staff and other relevant third parties such as agents, distributors and advertising representatives.

### **2. Policy & Procedures**

- A. Produce a written policy of commitment to compliance and articulate how this will be carried out. Set in place procedures so that the policy is well understood throughout the company. Ensure procedures are laid down to assess compliance against predetermined objectives and assessment criteria.

### **3. Management Responsibility**

- A. Detail the processes involved in establishing, implementing and maintaining the compliance program and the roles and responsibilities of management, staff and other stakeholders.
- B. Ensure line managers are responsible for compliance in their immediate area.

### **4. Resources & Authority**

- A. Ensure that the Compliance Manager or Senior Manager responsible for compliance systems has -
  - Authority, recognition and support within the organisation;
  - Access to all levels in the organisation to ensure compliance; Overall responsibility for design, integrity and updating of the program; and
  - Ready access to the Board when required.

- B. Ensure staff have access to the necessary materials including compliance manuals, training, reference material and databases.
- C. Ensure any external compliance service providers have the resources and expertise to carry out the required tasks.

**5. Continuous Improvement**

- A. Put in place procedures to ensure the program has regular ongoing reviews every twelve months from the implementation of the program.

**6. Operating Procedures for Compliance**

- A. Integrate compliance considerations into -
  - computer systems
  - forms
  - contracts
  - administrative procedures
  - financial evaluations
  - management performance evaluations (line and senior).

**7. Training**

- A. Develop and execute a practical and easily understood compliance training system throughout Golden Circle. Training will be -
  - integrated into induction courses
  - reviewed every twelve months
  - participatory
  - verifiable by third parties
  - framed to reflect areas of risk
  - integrated into line and senior management development.

**8. Complaints Handling System**

- A. Implement a visible and accessible complaints handling system which complies with Australian Standard AS 4269.

**9. Record Keeping**

- A. Keep an accurate record of compliance failures and complaints and of the rectification of such failures and complaints.

**10. Employee Compliance**

- A. Develop a disciplinary policy for breaches of the Act by employees and ensure that the policy is widely disseminated.
- B. Ensure that compliance is integrated into performance reviews for employees.

**11. Identification and Rectification**

- A. Develop a system to identify and classify compliance failure so that systemic and recurring problems are rectified.

**12. Reporting**

- A. Ensure that compliance problems are rapidly reported to the Compliance Manager or Senior Manager.

**13. Monitoring & Review**

- A. Introduce a system to monitor and review the effectiveness of the compliance program.

**14. Accountability**

- A. Ensure that the Compliance Manager or Senior Manager is accountable to the Board for compliance issues.

**5. AUDITING OF CORPORATE COMPLIANCE PROGRAMME**

- 1. Golden Circle shall cause, at its own expense, an independent audit of its compliance program to be conducted annually from the date of acceptance of the undertaking for a period of 3 years or at such other time as specified in the undertaking. The audit shall be carried out either by a legal firm (as nominated by Golden Circle) or a suitably qualified compliance professional who is entirely independent of Golden Circle. Such a professional will qualify as independent on the basis that he or she:

- is not a present or past staff member or director of Golden Circle;
- has not acted or does not act for Golden Circle;
- is not retained by Golden Circle in any other capacity;
- has not and does not provide consultancy or other services Golden Circle;
- has no substantial share holding or other interest in Golden Circle.

2. The auditor shall review and report on -
  - A. Golden Circle's adherence to the undertaking.
  - B. The implementation of the compliance program and the achievement of its objectives over the preceding twelve months.
  - C. Any recommended changes to the compliance program that may be necessary to ensure achievement of its objectives.
3. The date for the completion of the first such audit and the provision of the auditor's report to the Commission shall be one year and one month after the date of acceptance of the undertaking. The second and third audit reports shall be prepared and presented to the Commission by or on the anniversary of same date in the following years.
4. The Commission shall review the recommendations contained in each audit report. Subject to Commission approval Golden Circle shall implement those recommendations.

#### **EFFECTIVE DATE**

1. These undertakings will be effective forthwith upon acceptance by Golden Circle and the Commission.

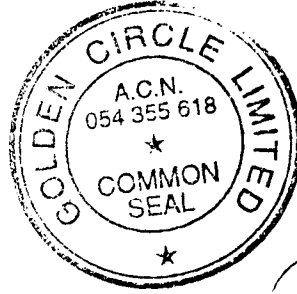
#### **ACKNOWLEDGMENTS**

1. Golden Circle acknowledges the Commission will make the undertaking available for public inspection.
2. Golden Circle acknowledges the Commission may from time to time publicly refer to this undertaking.
3. Golden Circle acknowledges this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.



**IN WITNESS OF THIS UNDERTAKING:**

THE COMMON SEAL OF )  
GOLDEN CIRCLE LIMITED )  
was affixed hereto by )  
authority of the Board of Directors) )  
in the presence of: )



.....  
Director

Name (Printed):

*Barry J. Kelly*

.....  
Director

*David James Grace*

This *28<sup>th</sup>* day of *October* 1998.

Accepted by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**  
pursuant to section 87B of the Trade Practices Act 1974.

.....  
~~Professor Allan Fels~~  
Chairman

*Allen Asher*

This *16<sup>th</sup>* day of *November* 1998