

## **TRADE PRACTICES ACT 1974**

### **UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION FOR THE PURPOSE OF SECTION 87B**

**BY**

**GALAXY IMPORTS (NSW) PTY LTD ACN 001 476 437**

#### **BACKGROUND**

1. Galaxy Imports (NSW) Pty Ltd ("Galaxy") is a company incorporated in the State of New South Wales. Galaxy's principal business activities is as a food importer and wholesaler, nut merchant, nut roaster and food packer. Galaxy carries on business from premises in Marrickville, New South Wales.
2. Galaxy imports, inter alia, stuffed olives from Spain and Black Greek, Kalamata, green, and mixed (green and black) olives from Greece. Galaxy processes the imported stuffed olives, Black Greek, Kalamata, green, mixed (green and black) by marinating them in Australian and imported ingredients. Galaxy then vacuum packages the olives in 500gm plastic packs and markets them under the brand name Gina Super Olives ("Gina").
3. On 17 January 2000 the Australian Competition and Consumer Commission ("the Commission") received a complaint concerning Gina Stuffed Olives. The complaint concerned Gina Stuffed Olives in a 500gm plastic pack with "Product of Australia" printed on the front of the package and "Imported and Packed in Australia by Galaxy Imports N.S.W Pty Ltd, 2-12 Sydney St, Marrickville NSW 2204" printed on the reverse side of the pack. The complaint said the two claims were misleading as both could not be correct and Galaxy had advised the stuffed olives were imported from Spain.
3. On 1 February 2000 the Commission wrote to Galaxy and advised that if the allegations made in the complaint were correct, Galaxy it may be at risk of contravening sections 52 and 53 (eb) of the Trade Practices Act ("the Act")
4. Galaxy replied by telephone on 3 February 2000 and by letter of 9 February 2000 and subsequently provided further information and material relating to its conduct by telephone and letter.
5. After assessing the information available, including that supplied by Galaxy, the Commission considers that Galaxy:
  - contravened sections 52 and 53(eb) of the Act by representing that the stuffed olives it imported from Spain and packaged at Marrickville after

- marinating them in Australian and imported ingredients, were either a "Product of Australia" or a "Product of Greece" : and
- contravened sections 52 and 53(eb) of the Act by representing that the Black Greek, Kalamata, green, and mixed (green and black) olives it imported from Greece and packaged at Marrickville after marinating them in Australian and imported ingredients, were a "Product of Greece".
6. Galaxy acknowledges that by representing the olives that it had imported, processed and packed were either a "Product of Australia" or a "Product of Greece" it may have contravened sections 52 and 53(eb) of the Act.

## **UNDERTAKINGS**

7. Galaxy gives the following undertakings to the Commission for the purpose of section 87B of the Act. Galaxy undertakes that:
- (i) it will not engage in misleading or deceptive conduct, or make false or misleading representations about the place of origin goods it imports, processes, packages or sells.
  - (ii) it will recall the Gina Stuffed Olives immediately on the acceptance of this Undertaking by the Commission.
  - (iii) it will over label all other Gina olive varieties with a label approved by the Commission within 7 working days of the acceptance of this Undertaking by the Commission.
  - (iv) it will publish a corrective notice, in the terms of Schedule 1 to this Undertaking, in "The Daily Telegraph" in Sydney, "The Herald-Sun" in Melbourne, "The Adelaide Advertiser" in Adelaide, "The West Australian" in Perth and a Greek translation of the corrective notice (to be approved by the Commission) in "The Greek Herald", "O Kosmos" and "Vima" in Sydney and "Neo Kosmos" in Melbourne. The corrective advertisement will be no smaller than 11cms by 20cms in size, with 9 point print the smallest print size and will be published within 14 days of the date this Undertaking is accepted by the Commission. It will forward the Commission a copy of each advertisement within 7 days of its publication.
  - (v) it will refund the purchase price of Gina olives to consumers who bought Gina olives because of the claims they were either a "Product of Australia" or a "Product of Greece" and who make a written request for refund by 31 May 2000.
  - (vi) it will to send to all its customers a letter in terms of Schedule 2 to this Undertaking. The letter will be forwarded under separate cover within 14 days of the date this Undertaking is accepted by the Commission. It will forward the Commission a copy of the mailing list within 7 days of the dispatch of the letter.

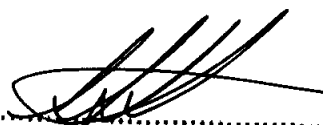
- (vii) it will implement a Trade Practices Corporate Compliance Program which will include an audit of its' product labelling, in the form specified in Schedule 3 to this Undertaking and in accordance with the times specified in the schedule.

## ACKNOWLEDGMENTS

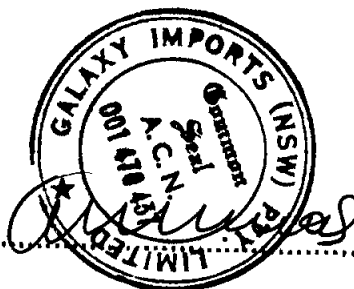
8. Galaxy acknowledges the Commission's right to make this undertaking available to the public including by placing it on a register, publishing it and allowing third parties to publish it.
9. Galaxy acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to the undertaking.
10. Galaxy 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

THE COMMON SEAL of GALAXY IMPORTS (NSW) PTY LTD ACN 001 476 437 is affixed in accordance with its articles of association in the presence of



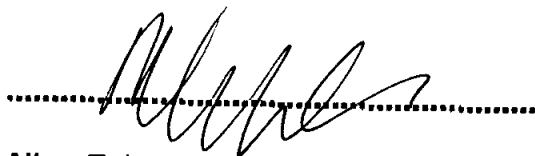
Secretary  
Name (printed): STEVEN SHINAS



Director  
Name (printed): GEORGE SHINAS

This 28 day of April 2000.

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



Allan Fels  
Chairman

This 20 day of May 2000.

## Schedule 1



# says sorry.

**We wrongly labelled Spanish olives as "Product of Greece" and "Product of Australia".**

Galaxy Imports (NSW) Pty Ltd sold its Gina brand "Stuffed Olives" in packs labelled "Product of Greece" or "Product of Australia". We imported these olives from Spain and marinated them in Australian and imported ingredients before packing them at Marrickville, New South Wales, Australia.

**Olives marinated & packed here not "Products of Greece".**

Galaxy also sold Gina marinated "Black Greek", "Kalamata", "Green", and "Mixed" (green and black) olives in packs labelled "Product of Greece". We imported these from Greece and we processed them in Australian and imported ingredients before packing them at Marrickville, New South Wales, Australia.

**ACCC investigates Galaxy "Product of" claims.**

The Australian Competition and Consumer Commission investigated Galaxy's place of origin claims about Gina olives. Our claims Gina olives were "Product of Australia" or "Product of Greece" were wrong. Galaxy admits its claims may breach the Trade Practices Act.

**Galaxy says "Sorry".**

Galaxy apologises to consumers who were misled by our claims.

**Refunds offered.**

Consumers who were misled into buying Gina olives may write to **Galaxy**, 2-12 Sydney St, Marrickville NSW 2204 by 31 May 2000 for a refund of the purchase price.

We are also writing to all our stockists about this matter.

**This notice forms part of Galaxy Undertakings to the Australian Competition and Consumer Commission.**

## Schedule 2

(To be printed on Galaxy letterhead)

# GINA SUPER OLIVES

## Corrective information and apology.

Dear Customer,

Galaxy Imports (NSW) Pty Ltd (Galaxy) is sending you this letter as part of an enforceable undertaking we have given the Australian Competition and Consumer Commission. The undertakings arise from country of origin claims we made which were not true.

### **Gina Super Olives brand "Stuffed Olives".**

From 1997 to 2000 Galaxy sold its' Gina "Stuffed Olives" in vacuum packs labelled "Product of Greece" or "Product of Australia" when the olives were imported from Spain, marinated in Australian and imported ingredients and packed by us at Marrickville, New South Wales, Australia.

### **Gina Super Olives brand marinated "Black Greek", "Kalamata", "Green", and "Mixed" (green and black).**

From 1997 to 2000 Galaxy sold its' Gina brand "Black Greek", "Kalamata", "Green", "Mixed" (green and black) olives in vacuum packs labelled "Product of Greece" when the olives, imported from Greece, were processed, by marinating in Australian and imported ingredients, and packed by us at Marrickville, New south Wales, Australia.

The Commission investigated the matter and after assessing the information available, including that supplied by Galaxy, the Commission considered that Galaxy:

- contravened sections 52 and 53(eb) of the Act by representing that the stuffed olives it imported from Spain and packaged at Marrickville after marinating them in Australian and imported ingredients, were either a "Product of Australia" or a "Product of Greece" : and
- contravened sections 52 and 53(eb) of the Act by representing that the Black Greek, Kalamata, green, and mixed (green and black) olives it imported from Greece and packaged at Marrickville after marinating

them in Australian and imported ingredients, were a "Product of Greece".

Section 52 prohibits a company from engaging in conduct is misleading or is likely to mislead or deceive. S52 is a general prohibition and only civil proceeding can be brought for a breach if it.

Section 53 prohibits a company from engaging in false or misleading representations about the place of origin of goods. Criminal and civil proceedings can be brought for a breach s53.

Galaxy admits its claims may breach the Trade Practices Act and apologises for its conduct.

Galaxy has offered refunds to consumers who were misled into buying Gina olives and this information was contained in a corrective notice we published in a number of newspapers as part of our undertaking.

**<Name>**

**<Position>**

**Galaxy Imports (NSW) Pty Ltd.**

### **Schedule 3**

#### **TRADE PRACTICES CORPORATE COMPLIANCE PROGRAM**

The Trade Practices Corporate Compliance Program ("the Program") to be undertaken by Galaxy will have the following features.

Galaxy will:

1. Place responsibility for the implementation and effectiveness of the Program with senior management.
2. Appoint a senior officer as a Trade Practices Compliance Officer.
3. Require the Trade Practices Compliance Officer to appoint an independent external person, with experience in trade practices law, to audit all Galaxy product packaging to ensure that it complies with the *Trade Practices Act 1974* ("the Act"), and in particular with the country of origin labelling requirements. The audit will be completed within 60 days of the acceptance of the s87B undertaking by the Australian Competition and Consumer Commission ("the Commission"). The independent external person will report to the Commission within one week of completion of the audit. The report will identify the product and its source(s) and the place of origin representations made on package labels and any labelling change needed to comply with the Act. This audit and report will be at Galaxy's expense.
4. Require the Trade Practices Compliance Officer to review all future packaging to ensure that it complies with the Act prior to its use.
5. Require the Trade Practices Compliance Officer to maintain a documentary record of the compliance reviews of future packaging. The documentary record will include:
  - a) a description of the product, its source and the place of origin representations made on packages (including the date the packaging was ordered and supplied together with supplier details;
  - b) a copy of the packaging;
  - c) written advice that the product and packaging has been reviewed and cleared by the Trade Practices Compliance Officer (including the date on which the product and packaging was reviewed and cleared); and
  - d) written advice of any possible contraventions of the Act that were identified by the Trade Practices Compliance Officer and the action taken to address these possible contraventions.
6. Ensure that the documentary records of the compliance reviews are available to the Commission to be reviewed from time to time. The records are to be available from one week after the date of packaging being

approved for a period of 3 years. Such records shall be provided to the Commission within 5 working days of a written request for those records.

7. Ensure that the Program incorporates an appropriate recording mechanism for any enquiries or complaints about Galaxy country of origin representations.
8. Ensure that the Program is approved, by an independent external person with experience in trade practices law, prior to implementation.
9. Ensure that an independent external person, with experience in trade practices law, conducts training sessions on the Act for each staff member on three occasions during over the three years following the Commission's acceptance of the undertaking. The initial training will take place within one month of the Commission's acceptance of the undertaking and thereafter at yearly intervals or as near to yearly intervals as practicable; and
10. Ensure that an independent external person, with expertise in trade practices law, conducts an audit of the program and training provided in the program with a view to improving its effectiveness. Such audits to be conducted after each staff training session on the Act. The independent external person will report on these audits to the Commission within one month of completion of the audit and these reports will be at Galaxy's expense.