



UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

**KEITH HARRIS & CO LTD (ACN. 000 026 282) TRADING AS
ORCHY**

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (the Commission) by Keith Harris & Co Ltd (ACN. 000 026 282) trading as Orchy ("Keith Harris") of 7 Sefton Road Thornleigh in New South Wales under section 87B of the *Trade Practices Act 1974* (the Act).

BACKGROUND

2. In correspondence between representatives of the Commission and representatives of Keith Harris between March 2000 to May 2001, the Commission expressed concerns that the labelling on Keith Harris' Orchy fruit juice and drink products may be misleading contrary to sections 52 and 53(eb) of the Act in that the representation "Product of Australia" was printed on products supplied by Keith Harris that contained juice not produced in Australia.
3. Keith Harris has accepted that the use of the words "Product of Australia" on juices and drinks containing juice not produced in Australia constituted misleading or deceptive conduct and were false or misleading representations in contravention of sections 52 and 53(eb) of the Act.
4. Keith Harris has agreed to give the Undertakings contained herein to the Commission under section 87B of the Act to address the Commission's concerns in relation to the labelling of the Orchy products. The Commission has agreed to accept the Keith Harris Undertakings under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

1. This Undertaking comes into effect when:
 - (i) the Undertaking is executed by Keith Harris, and

- (ii) the Commission accepts the Undertaking so executed.

UNDERTAKINGS

1. Keith Harris gives the following Undertakings to the Commission for the purposes of section 87B of the Act:-

Conduct Undertakings

- (i) Keith Harris will not by itself, its directors, servants or agents or howsoever, in trade and commerce, engage in misleading or deceptive conduct or make false or misleading representations in relation to the country of origin representations in respect of its fruit juice and drinks;

Trade Practices Compliance Program Undertaking

- (ii) Within four months of the commencement of this Undertaking Keith Harris will design, implement and make provision to maintain and audit, at its own expense, a trade practices corporate compliance program which complies with Australian Standard AS 3806-1998 *Compliance Programs* relating to those provisions of the Act which are relevant to the conduct of its business and in particular having regard to Part V of the Act;
- (iii) The audit of the corporate compliance program will be undertaken on an annual basis on the anniversary of this Undertaking or such other time as the Commission may agree for a period of three years by an independent auditor who is a suitably qualified compliance professional. The auditor will review and report in writing to Keith Harris in relation to the particulars of the compliance program, its implementation, the achievement of its objectives and any recommended changes that may be necessary to ensure achievement of its objectives;
- (iv) As part of its commitment to the undertakings given herein, Keith Harris will forthwith, if it has not already done so, review all its product lines to ensure any representations made as to the country of origin of these products do not contravene the Act.

ACKNOWLEDGMENTS

1. Keith Harris acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.

2. Keith Harris acknowledge and accept that this undertaking in no way derogates the rights and remedies available to any person arising from Keith Harris' conduct.

IN WITNESS OF THIS UNDERTAKING

The common seal of **Keith Harris & Co Ltd** (ACN 000 026 282) was hereunto affixed by authority of its Board of Directors and in accordance with its Articles of Association in the presence of:

Director *H. Harrison*

Director/Secretary *H. Nilpazack*
H. NILPAZACK



DATED this 21st day of May 2001

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

R. Hodgson

Chairperson

DATED this 4th day of ~~May~~ JUNE 2001