

**TRADE PRACTICES ACT 1974**

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

**BY BERRI LIMITED (ACN 008 077 889)**

**PERSON GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Berri Limited (ACN 008 077 889) of 60 Jolimont Street, East Melbourne in Victoria ("Berri") under section 87B of the *Trade Practices Act 1974* ("the Act").

**BACKGROUND**

In correspondence between representatives of the Commission and representatives of Berri in January 1999, the Commission expressed concerns that the labelling and advertising by Berri of the company's "Frusion" products ("the product") may be misleading contrary to section 52 of the Act, or may constitute false representations contrary to section 53(a) of the Act, in that:

- (a) the words "From 100% whole fruit" appeared on the front labels of the product, when the actual position is that the product is made from reconstituted fruit juice and fruit purees; and
- (b) the product had been produced by Berri substantially from the fruit named on the front label when the actual position is that the major ingredient in each product is reconstituted grape juice.

Berri acknowledges that consumers may have been misled about the product's contents and 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 and advertising by Berri of the product.

The Commission has agreed to accept the Berri undertakings under section 87B of the Act.

## COMMENCEMENT OF UNDERTAKINGS

1. This undertaking comes into effect when:
  - (a) the undertaking is executed by Berri; and
  - (b) the undertaking so executed is accepted by the Commission.

## UNDERTAKINGS

2. Berri will not advertise the "Frusion" product as being produced from whole fruit where the product has not been produced by Berri from whole fruit.
3. Berri will not supply the "Frusion" product after Wednesday 10 February 1999 unless the product is labelled so that the words "From 100% whole fruit" are removed from the "fronts" of the labels and the word "Frusion" at the bottom of the label is replaced by the word "flavour".
4. Berri will use its best endeavours to cause the removal of currently displayed point of sale advertising for the Frusion product. Berri will commence action for the removal for the point of sale advertising as soon as possible and will complete the removal of the advertising by 15 April 1999. Berri will give priority to the removal of the point of sale advertising from retail outlets which account for the bulk of the sales for the Frusion product. Berri will report to the Commission in writing on the progress made on the removal of the point of sale advertising on 15 February 1999 and 15 March 1999 and Berri will provide any information reasonably requested by the Commission as to the removal process.
5. Berri will, at its own expense, no later than Sunday 6 February 1999, place advertisements in the terms of the Annexure to this undertaking, in each of the following newspapers:
  - The Sydney Morning Herald
  - The Daily Telegraph
  - The Sunday Telegraph
  - The Sun Herald
  - The Herald Sun
  - The Sunday Herald Sun
  - The Age Weekend
  - The Weekend Australian
  - The Courier Mail
  - The Sunday Mail

The advertisement will:

- (i) be at least two columns by 180mm in size;
- (ii) be printed in at least 10 point text; and
- (iii) be placed within the first five pages of each newspaper.

Copies of the advertisements so placed will be provided to the Commission within 21 days of the date of commencement of this undertaking.

- 6. Berri will pay to each consumer who can verify their purchase of a "Frusion from 100% Whole Fruit" product and who claims to have been misled a full refund on the price paid by the consumer.
- 7. Berri will, within 14 days of the commencement of this undertaking, pay \$7,000 towards the Commission's costs in this matter.

Dated : 21 January 1999

**THE COMMON SEAL of BERRI LIMITED**

was duly affixed <sup>IN ACCORDANCE WITH</sup> ~~with the approval~~ )  
~~of its board of directors in the~~ )  
 ITS CONSTITUTION )  
 presence of: )



*Michael*

Signature

K. M. POLLARO

Print Name

COMPANY SECRETARY

Office held

*M. J. Cook*

Signature

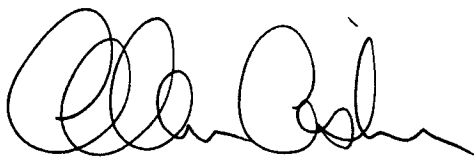
M. J. COOK

Print Name

DIRECTOR

Office held

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION**

A handwritten signature in black ink, consisting of several large, overlapping loops and a trailing flourish, positioned above a horizontal line.

Acting Chairperson

Dated: 21 January 1999

# A corrective advertisement from Berri

Makers of Fusion products

BERRI LOGO

The Australian Competition and Consumer Commission has concerns about claims Berri makes on the labelling of Fusion products and requires Berri to correct these claims.

Labelling on both the 500ml and one litre containers of Fusion use the words "Fusion from 100% whole fruit" along with the name of the fruit for the relevant variety.

Advertising for Fusion shows tins filled with whole fruit. Written underneath this are the words "From 100% whole fruit, not just the juice".

However the Fusion product is made from a blend of reconstituted fruit juices and fruit purees. Reconstituted grape juice is the major ingredient in each product.

Berri acknowledges that consumers may have been misled about the product's contents and has agreed to relabel the product. Consumers who can verify their purchase of the Fusion product and who consider they may have been misled by the labelling or advertising may contact Berri at 61 Jolimont Street East Melbourne, Victoria 3002 or on telephone 1800 131 133 for a full refund of the purchase price.



Australian Competition & Consumer Commission

THE SYDNEY MORNING HERALD

Fri 29 Jan 1999

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## A corrective advertisement from Berri

Makers of Frusion Products

# BERRI

The Australian Competition and Consumer Commission has concerns about claims Berri makes on the labelling of Frusion products and requires Berri to correct these claims.

Labelling on both the 300ml and one litre containers of Frusion use the words "Frusion from 100% whole fruit" along with the name of the fruits for the relevant variety.

Advertising for Frusion shows containers filled with whole fruit. Written underneath this are the words "From 100% whole fruit, not just the juice".

However the Frusion product is made from a blend of reconstituted fruit juices and fruit purees. Reconstituted grape juice is the major ingredient in each product.

Berri acknowledges that consumers may have been misled about the product's contents and has agreed to relabel the product. Consumers who can verify their purchase of the Frusion product and who consider they may have been misled by the labelling or advertising may contact Berri at:

60 Jolimont Street

East Melbourne, Victoria 3002

or can phone 1800 131 133

for a full refund of the purchase price.



Australian  
Competition &  
Consumer  
Commission