



**TRADE PRACTICES ACT 1974  
UNDERTAKING TO THE AUSTRALIAN COMPETITION  
AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF  
SECTION 87B  
BY  
BERRI LIMITED (ACN 008 007 889)**

**PERSON GIVING UNDERTAKING**

- 1 This Undertaking is given to the Australian Competition and Consumer Commission (**Commission**) by Berri Limited (**Berri**) of 15-31 Pelham Street, Carlton in the State of Victoria, under section 87B of the *Trade Practices Act 1974 (Act)*.

**BACKGROUND**

- 2 In late July / early August 2004, Berri launched a new fruit juice product branded SuperJuice Green Zone. The product is 99% fruit juice but with wheat grass, barley grass and spirulina added in a concentrated powder form.
- 3 The original Green Zone packaging (on its back panel) stated that:

*"We've blended highly nourishing shots of both wheat and barley grass into our fruit juice and guess what – it tastes great!"*

A similar verbal representation also appeared on the Berri website.
- 4 In response to a consumer complaint received on or about 28 August 2004 regarding the quantity of wheat and barley grass contained in the Green Zone product, Berri determined to review the formulation and packaging of Green Zone to ensure that the product was meeting consumer requirements. As a result of this review, on 10 November 2004, Berri approved the implementation of a revised formulation of Green Zone with the quantity of wheat grass, barley grass and spirulina being increased from 300 milligrams per litre to 2,000 milligrams per litre in total. Berri also implemented a variation to the packaging with the word "shots" being deleted from the sentence noted in paragraph 3 above and the sentence being amended to read *"We've boosted our juice with highly nourishing wheat and barley grass and guess what – it tastes great!"* The varied formulation and packaging reached stores in January 2005.
- 5 On 2 December 2004 the Commission contacted Berri and expressed concern regarding the use of the word "shots" (in the sentence noted in paragraph 3 above) as it appeared on the original Green Zone packaging in relation to Part V of the Act. It is the Commission's opinion that a "shot" equals 30mls and as such the original Green Zone product did not contain "shots" of wheat or barley grass. The Commission subsequently expressed concerns regarding the verbal representation on the Berri website and the fact the SuperJuice Green Zone packaging, together with the packaging of Berri's SuperJuice Immune and Kickstart products, notes that "no concentrates" are included in the products. While the SuperJuice products do not contain any fruit concentrates, herbal or grass ingredients are added in concentrated form. The Commission

also believes that consumer awareness could be improved if the SuperJuice packaging disclosed the quantity of grass or herbal ingredients not only in volume but also in milligrams.

- 6 In response to the Commission's concerns regarding the original Green Zone packaging, Berri has offered this Undertaking to the Commission.

### **COMMENCEMENT OF UNDERTAKING**

- 7 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Berri; and
  - (b) the Commission accepts the Undertaking.

### **UNDERTAKINGS**

- 8 Berri undertakes to:
- (a) within 1 month of this Undertaking taking effect, establish a New Products Committee made up of the Chief Executive Officer, Director of Marketing, General Counsel, Director of Human Resources and an independent person specifically engaged to provide a consumer viewpoint. The Australian Consumer's Association (**ACA**) will be invited to nominate the consumer representative. If the ACA declines to nominate someone Berri will nominate a suitable independent person. All packaging for any entirely new products developed by Berri must be reviewed by, and be subject to the approval of, the Committee. The Committee will operate for a minimum of 2 years. The Commission will be notified of the establishment of the Committee;
  - (b) ensure Berri's Chief Executive Officer will discuss with Berri's 50 most senior employees the importance of complying with the Act and Berri's policy and commitment to at all times act in accordance with the Act. Such discussions are to be completed within 2 months of this Undertaking taking effect with the Commission to be notified upon completion;
  - (c) ensure Berri's Chief Executive Officer will meet with the 3 most senior Berri employees involved in product labelling in the technical, marketing, purchasing and legal departments to:
    - (i) seek input on how Berri may improve its labelling development and approval process; and
    - (ii) reinforce to them Berri's policy and commitment to at all times act in accordance with the Act.Such meetings are to be completed within 2 months of this Undertaking taking effect with the Commission to be notified upon completion;
  - (d) engage an external legal presenter to provide to relevant members of Berri's executive team and marketing department a training presentation on labelling and Food Standards Code issues with particular focus on the use of health claims and additive ingredients in fruit juice. Berri will use

- its best endeavours to ensure this presentation is provided within 6 weeks of this Undertaking taking effect with the Commission to be notified upon completion;
- (e) amend the packaging for all products in the SuperJuice range so that the ingredients added to the fruit juice (being as applicable: wheat grass, barley grass, spirulina, echinacea, guarana, ginseng and ginko) are specified in both percentage terms and actual milligrams and the wording "no concentrates" is amended to read "no fruit concentrates" (subject to complying with Food Standards Code requirements and packaging lead times and the runout of existing packaging stocks);
  - (f) cause to be distributed to members of the Australian Fruit Juice Association via a newsletter, an article in the form attached as Annexure A to this Undertaking, such newsletter to be distributed within 2 months of this Undertaking taking effect;
  - (g) instruct the law firm Corrs Chambers Westgarth (**Corrs**) to undertake a review of Berri's existing Label Approval Policy and Procedure with Berri to use its best endeavours to ensure such review is completed within 3 months of this Undertaking taking effect and with the Commission to be notified when such review has been completed;
  - (h) instruct Corrs to review Berri's Trade Practices Compliance Program as it relates to Part V of the Trade Practices Act with Berri to use its best endeavours to ensure such review is completed within 3 months of this Undertaking taking effect and with the Commission to be notified when such review has been completed; and
  - (i) implement, as soon as reasonably practicable, any reasonable and appropriate recommendation made by Corrs arising from its review of the Label Approval Policy and Procedure and Trade Practices Compliance Program.

#### **ACKNOWLEDGMENT**

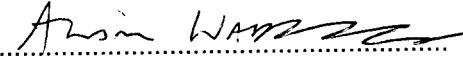
- 9 Berri acknowledges that the Commission will make this undertaking available for public inspection.
- 10 Berri acknowledges that the Commission will, from time to time, publicly refer to this Undertaking.
- 11 Berri acknowledges that the acceptance of this Undertaking by the Commission in no way derogates from the rights and remedies that may be available to any other person arising from the circumstances referred to in paragraphs 2 to 5 of this Undertaking.



The Common Seal of Berri Limited is )  
affixed in the presence of: )

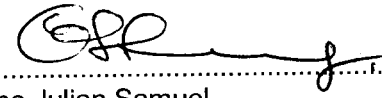
  
.....  
Company Secretary/Director

COLIN KOP  
.....  
Name of Company Secretary/Director  
(print)

  
.....  
Director

ALISON WATKINS  
.....  
Name of Director (print)

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

  
.....  
Graeme Julian Samuel  
Chairperson

This 5<sup>th</sup> day of May 2005

## **Annexure A**

### **Contribution to the AFJA Newsletter in accordance with Undertaking 9(f)**

#### **'Innovation in Juice - Lessons Learned from Superjuice by Alison Watkins, CEO of Berri Ltd**

I spoke recently at the AFJA conference about the importance of innovation for the juice industry. In this article I want to reinforce those messages and illustrate with a recent ACCC experience we've had at Berri, which has resulted in Berri providing the ACCC with a court enforceable undertaking under section 87B of the Trade Practices Act 1974 and, which I hope will also highlight the need for us all to be especially vigilant, particularly where innovation takes us into unfamiliar territory.

Consumers increasingly care about their health and well-being, and the juice industry has an important role to play in giving them interesting and "better-for-you" beverage alternatives.

The fact is, that innovation offers many challenges in juice. I mentioned many of these in my speech, such as the risks involved and the difficulty of getting a financial payoff. I also mentioned that it is not always easy to innovate within the regulatory framework. Nonetheless it is important for our industry that we respect and comply with the various regulations which apply, notably the Foods Standards Code and the Trade Practices Act.

If we are to be viewed as a professional industry compliance with the law is fundamental. It's also fundamental for anyone who builds a business in this industry with a view to selling it. No reputable buyer is going to take on the legal risks that come with non-compliance, which means your business either won't be saleable, or you will be underwriting any risks with open-ended warranties. Sometimes, these regulations can feel like constraints to innovation. It is often a difficult balance between being innovative and being compliant and the usual debates between marketers and lawyers often ensue! Of course getting the balance wrong can have other consequences in terms of consumer confidence, relabelling costs and legal fees. It may even mean litigation.

I would like to share with you a recent experience we have had at Berri to provide some learnings for the whole industry. It involves the recent innovation in juice of including herbal and other additives. The juice bars led the way here, and packaged juices have followed. Anyone who heads down this track soon finds that there is no guidance on what constitutes adequate and safe levels. Nor is there any real guidance on what claims are appropriate in relation to these additives. Labelling guidelines, specify only that percentages by volume should be used, which in the case of some of these highly concentrated ingredients can result in ridiculously small-looking percentages appearing. So manufacturers have to use their discretion after conducting their own research. This

may include relying on the practices of other manufacturers, for example vitamin companies, which is less than ideal.

In late July / early August 2004, Berri proudly launched 3 new fruit juice products branded SuperJuice Green Zone, SuperJuice Immune and SuperJuice Kickstart. We followed our usual internal procedures when developing a new product and conducted technical research on the ingredients, consulted suppliers and developed a number of different prototypes, before settling on the above 3 final products.

The SuperJuice Green Zone product is 99% fruit juice but with wheat grass, barley grass and spirulina added in a concentrated powder form. In response to a consumer complaint received in August 2004 regarding the quantity of wheat and barley grass contained in the Green Zone product, we reviewed our formulation and packaging of Green Zone to ensure that the product was meeting consumer requirements. As a result of this review, on 10 November 2004, we approved the implementation of a revised formulation of Green Zone with the quantity of wheat grass, barley grass and spirulina being increased from 300 milligrams per litre to 2,000 milligrams per litre in total. We also implemented a variation to the packaging to read "*We've boosted our juice with highly nourishing wheat and barley grass and guess what – it tastes great!*" The varied formulation and packaging reached stores in January 2005. The original packaging noted that "shots" of wheat grass and barley grass had been added. A similar representation appeared on Berri's website.

On 2 December 2004 Berri found itself in the unfortunate position of being contacted by the ACCC. The ACCC expressed concern regarding the use of the word "shots" as it appeared on the original Green Zone packaging. It is the ACCC's opinion that a "shot" equals 30mls and as such, despite the concentrated nature of the ingredients, the original Green Zone product did not contain "shots" of wheat or barley grass. The ACCC also expressed concerns regarding the SuperJuice Green Zone packaging, together with the packaging of Berri's SuperJuice Immune and Kickstart products, because it states that "no concentrates" are included in the products. While the SuperJuice products do not contain any fruit concentrates, herbal or grass ingredients are added in concentrated form.

Berri had some very constructive discussions with the ACCC. Subsequently in an undertaking to the ACCC Berri agreed to review its labelling approval policies and trade practices compliance program as well as share its experience with AFJA members to help highlight compliance issues.

Amongst several key learnings one was that our internal new product development processes did not enable us to really challenge ourselves on areas of legal risk for new products that take us into uncharted territory, such as adding herbal ingredients to juice. We have reviewed and strengthened our processes and are confident we will continue to deliver a high level of innovation and the highest standards of compliance. To help raise consumer awareness our packaging will disclose these kind of ingredients not only in volume but also in milligrams.

We share this experience because we are conscious of our leadership position in juice and the responsibilities that brings. One clear responsibility is to drive category innovation. Another is to be a role model for the industry on compliance. At Berri we take these responsibilities very seriously.

It is really important that we participate effectively as an industry in the various taskforces set up to strengthen the regulatory environment. For example, a lot of progress has been made in the area of health claims and we need to be closely involved. We always need to be conscious that just because something is permitted under the Food Code, it may still fall foul of the Trade Practices Act. A close working relationship between the AFJA and the ACCC is important, but can only be useful if the AFJA is truly representative of the industry. Ultimately, the only way to be sure is to be in touch with consumers, and understand how they form their impressions of our products from the labels, branding, packaging and presentation.

A handwritten signature in black ink, appearing to read "Alison Watkins", with a stylized flourish at the end.

Alison Watkins

Chief Executive Officer