

**TRADE PRACTICES ACT 1974**

**Undertaking to the Australian Competition and Consumer Commission given for  
the purposes of section 87B**

**by**

**BEVCO PTY LTD**

**ACN. 108 609 418**

**Party Giving Undertaking**

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Bevco Pty Ltd ACN 108 609 418 (Bevco) of 15 Lawson St, Mudgee, in the state of New South Wales, under section 87B of the Trade Practices Act 1974 (TPA).

**Background**

2. The ACCC received a complaint concerning the labelling of Bevco pineapple juice. This product was labelled identifying the product as "100% Australian Made and Owned", however, the ingredients listed on the label also stated that the product contained "Reconstituted Imported Pineapple Juice (99.9%), Vitamin C (300)".
3. Upon raising the complaint with Bevco, the company confirmed that the subject product contained reconstituted imported juice. Furthermore, in reviewing all its beverage products, Bevco identified further products that had labels containing the statement "100% Australian Made & Owned" where they consisted of imported juices. The ACCC acknowledges that the ingredient panels on the Bevco labels correctly identified that the subject beverages contained imported juice.
4. The ACCC considers that the reconstitution of imported concentrated fruit juice into fruit juice for sale is unlikely to be sufficient to allow Bevco to legitimately claim that the beverage products in question were made in Australia.
5. Accordingly, the ACCC has reached the view that the labelling of the subject beverage products as "100% Australian Made & Owned" when those products contained imported reconstituted juice was likely to mislead consumers as to the origin of the beverage products and consequently may have contravened section 52 (which deals with misleading or deceptive conduct), and section 53(a) (which deals with false representations concerning a particular standard, quality, value, grade, composition, style or model or a particular history or previous use) or 53(eb) (which deals with false representations concerning the place of origin of goods) of the TPA.
6. Bevco has agreed to give the following undertakings to the ACCC under section 87B of the TPA to address the ACCC's concerns in relation to the labelling of its beverage products.

## **Commencement of the Undertaking**

7. This undertaking comes into effect when:
  - 7.1. The undertaking is executed by Bevco; and
  - 7.2. The ACCC accepts the Undertaking so executed.
8. Upon the commencement of this Undertaking, Bevco undertakes to assume the obligations set out in paragraph 9.

## **Undertakings**

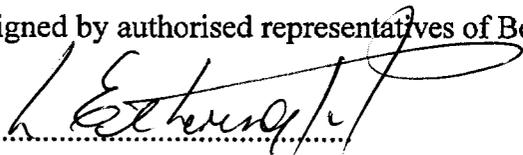
9. Bevco undertakes for the purposes of section 87B of the TPA:
  - 9.1. that it will not, and will ensure that its subsidiaries will not, package its goods, including all labelling, with any statement that they are 'made in Australia' for three (3) years unless it has first established, by conducting all necessary enquiries and calculations, that the products meet the defence test for country of origin claims set out in section 65AB of the TPA, namely that:
    - 9.1.1. the products have been substantially transformed, as defined in section 65AE of the TPA, in Australia; and
    - 9.1.2. 50% or more of the cost of manufacturing the goods is attributable to manufacturing processes that occurred in Australia.
  - 9.2. that it will, within 21 days of the commencement of this undertaking, place a corrective advertisement in the form set out in **Annexure A** to this undertaking in a Saturday edition of the largest circulation daily capital city newspaper in each State and Territory in Australia in which Bevco beverage products have been sold. The corrective advertisement will be placed within the first ten pages of each newspaper, and will be of a size of at least 15cm x 12 cm (or equivalent area), with minimum 9 point font size. The heading of the corrective newspaper advertisement will be at least 2 point font size larger than the other text.
  - 9.3. Bevco will provide the ACCC, within 7 days after the publication date of each corrective newspaper advertisement, with a copy of the corrective newspaper advertisement.
  - 9.4. Bevco will, within 90 days of the date of this undertaking being accepted, establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure B**. The Compliance Program is designed to ensure awareness of Bevco's responsibilities in relation to section 52, 53(a) and 53(eb) of the TPA.
  - 9.5. Bevco will maintain and continue to implement the Trade Practices Compliance Program for a period of three (3) years from the date of this undertaking coming into effect.
  - 9.6. Bevco will provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

## Acknowledgments

10. Bevco acknowledges that the ACCC will make this undertaking available for public inspection.
11. Bevco further acknowledges that the ACCC will from time to time publicly refer to this undertaking.
12. Bevco further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

## Execution

Signed by authorised representatives of Bevco (ACN 108 609 418):

  
.....

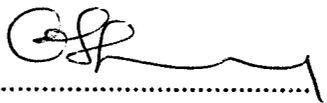
Secretary/Director

  
.....

Director

This 22 day of May 2007

**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 June 2007

## Annexure A

### BEVCO PTY LTD – CORRECTIVE ADVERTISEMENT

#### IMPORTANT NOTICE COUNTRY OF ORIGIN LABELLING

Bevco Pty Ltd is a manufacturer and distributor of fruit juice and spring water products.

Bevco has used the term “100% Australian Made and Owned” on labels for its Bevco and Macquarie Valley brand juice products. In fact, some of these products contained 99.9% imported reconstituted juice. The label for these products accurately disclosed that the beverage contained reconstituted imported juice in the ingredients list. However, the ACCC considers that the reconstitution of imported concentrated fruit juice into fruit juice for sale is unlikely to be sufficient to allow Bevco to legitimately claim that the beverage products in question were ‘made in Australia’.

Accordingly, it is the ACCC’s view that these labels are likely to be in contravention of the *Trade Practices Act* which requires that any claims made be accurate and not misleading to consumers. Bevco has ceased using the offending labels.

We acknowledge the labels were incorrect and that some consumers may have been misled by the claims we made on our beverage labels. Bevco apologises to those consumers.

[insert Government and ACCC logo]

This corrective advertisement has been placed by Bevco Pty Ltd in compliance with court enforceable undertakings given to the ACCC.

## Annexure B

### **TRADE PRACTICES COMPLIANCE PROGRAM TO BE IMPLEMENTED BY BEVCO PTY LTD**

Bevco Pty Ltd (Bevco) will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

#### **1. Appointments**

- 1.1. Within one (1) month of the date of the Undertaking coming into effect Bevco will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

#### **2. Compliance Officer Training**

- 2.1. Bevco will ensure that, within three (3) months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on section 52, 53(a) and 53(eb) of the TPA.
- 2.2. Bevco shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Bevco, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

#### **3. Staff Training**

- 3.1. Bevco will cause all employees of Bevco whose duties could result in them being concerned with conduct that may contravene section 52, 53(a) and 53(eb) to receive regular (at least once a year) practical training administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in trade practices law, that focuses on section 52, 53(a) and 53(eb) of the TPA.

#### **4. Complaints handling – Bevco will:**

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within two (2) months of the Undertaking coming into effect; and
- 4.2. provide the ACCC with an outline of the complaint handling system within two (2) months of the Undertaking coming into effect.

5. If requested by the ACCC, Bevco shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.