

## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B

BY

**HARVEY FRESH (1994) LTD**

(A.C.N. 065 591 219)

#### PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Harvey Fresh (1994) Ltd (A.C.N. 065 591 219) (**Harvey Fresh**) of Third Street, Harvey, in the state of Western Australia, under section 87B of the *Trade Practices Act 1974 (TPA)*.

#### BACKGROUND

2. Harvey Fresh is incorporated in Western Australia and carries on business as a manufacturer and distributor of Harvey Fresh fruit juice and dairy products.
3. Between January 2008 and March 2008, Harvey Fresh manufactured and distributed a 250mL Apple & Blackcurrant Fruit Juice product (**Product**) with labelling displaying the following representations:
  - 3.1 '100% JUICE';
  - 3.2 'APPLE & BLACKCURRANT'; and
  - 3.3 in smaller font on the side of the label 'INGREDIENTS:  
AUSTRALIAN APPLE CONCENTRATE, BLACKCURRANT  
FLAVOUR, GRAPE SKIN EXTRACT, COLOUR 466.'
4. The ACCC believes that the use of the '100% Juice' wording on the label of the Product indicates that the juice contains 100% of the respective characterising ingredient, that is apple and blackcurrant juice. The ACCC is concerned that where flavourings, colours or extracts have been added to the Product, the '100% juice' claim may potentially mislead consumers who believe the Product is 100% fruit juice in its composition.
5. The ACCC considers that Harvey Fresh may have contravened sections 52 and 53(a) of the TPA.

6. Harvey Fresh acknowledges the ACCC's concerns that the wording on the label of the Product creates the impression that the Product contains 100% apple and blackcurrant juice, when this is not the case.
7. Harvey Fresh acknowledges that its conduct may have misled consumers and that such conduct may have been in contravention of sections 52 and 53(a) of the TPA.
8. Harvey Fresh has cooperated with the ACCC to resolve the ACCC's concerns and has offered undertakings pursuant to section 87B of the TPA.

## COMMENCEMENT

9. This Undertaking comes into effect when:
  - 9.1 the Undertaking is executed by Harvey Fresh; and
  - 9.2 the ACCC accepts the Undertaking so executed.

Upon the commencement of this Undertaking, Harvey Fresh agrees to assume the obligations set out in paragraph 10.

## UNDERTAKINGS

10. Harvey Fresh undertakes for the purposes of section 87B of the TPA that:
  - 10.1. it will not, whether by itself, its servants or agents, make a representation in trade or commerce in relation to the supply, the offering of supply, the packaging, the labelling or the promotion of any fruit juice product that a product contains 100% juice, when the product does not contain 100% juice;
  - 10.2. it will use its best endeavours to contact all retail customers to which it has supplied the Product to inform them of the conduct and recall all units of the Product that it has supplied to them;
  - 10.3. it will, at its own expense, cause to publish an information notice on its website at <http://www.harveyfresh.com.au/freshFruitJuice.cfm> (fresh fruit juice product list) within 30 days of the date of the commencement of this Undertaking, for a continuous period of 30 days, a consumer notice in the form and terms of **Annexure A** to this Undertaking. The notice will:
    - 10.3.1. be a size that consists of at least 40% of the images on screen;
    - 10.3.2. be viewable immediately on screen after the web page is accessed;

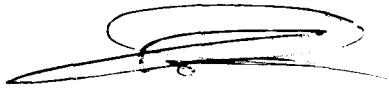
- 10.3.3. not require a further selection of hyperlinks or scrolling on the screen to be seen; and
- 10.4. within three months of the commencement of this Undertaking, to implement and maintain a Trade Practices Compliance Program in accordance with the provisions of **Annexure B** to this Undertaking for the purpose of ensuring that the officers and employees of Harvey Fresh are aware of their responsibilities and obligations under sections 52 and 53 of the TPA.

#### **ACKNOWLEDGEMENTS**

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

**EXECUTED BY**

Harvey Fresh (1994) Ltd (A.C.N. 065 591 219) and  
by its authorised officers  
pursuant to section 127(1) of the *Corporations Act 2001*



Signature

JOHN SCOLARO

Print name

DIRECTOR

Office held

RP Bonavita

Signature

ROSANA BONAVIDA

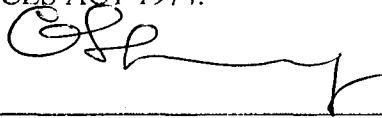
Print name

Company Secretary

Office held

This *5th* day of *May* 2008

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



Graeme Julian Samuel  
Chairperson

This *13* day of *May* 2008

## ANNEXURE A

# 250mL Apple & Blackcurrant 100% Juice Incorrect Labelling

[Insert Harvey Fresh logo]

The Australian Competition and Consumer Commission (ACCC) has raised concerns about the labelling of Harvey Fresh 250mL Apple & Blackcurrant juice.

The labelling on the juice contained the words "100% Juice", however as indicated on the ingredients label, the product also contains added flavouring and grape skin extract.

The ACCC is concerned the "100% juice" representation on the labelling of the 250mL Apple & Blackcurrant juice indicates that the product consists of 100% Apple & Blackcurrant fruit juice when this may not be the case.

Harvey Fresh acknowledges that the labelling may have misled consumers as to the content of the 250mL Apple & Blackcurrant juice and it has taken steps to recall the product and amend its labelling of the 250mL Apple & Blackcurrant juice.

The ACCC has accepted court enforceable undertakings from Harvey Fresh which require Harvey Fresh to:

- ensure that if they represent a product contains 100% juice that the product consists entirely of fruit juice;
- inform customers about the conduct and recall incorrectly labelled products;
- implement a trade practices compliance program, including staff training, to assist in the prevention of such conduct in the future; and
- publish this notice.

For further information, please contact Harvey Fresh on (08) 9729 0600



Australian  
Competition &  
Consumer  
Commission

This information notice has been placed by Harvey Fresh (1994) Ltd pursuant to Undertakings accepted by the ACCC.

## ANNEXURE B

### TRADE PRACTICES COMPLIANCE PROGRAM

Harvey Fresh will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

#### 1. Appointments

- 1.1. Within 1 month of the commencement of this Undertaking, Harvey Fresh will appoint a Director, or Manager from within the business to be responsible for the development, implementation and maintenance of the Compliance Program (**Compliance Officer**).

#### 2. Compliance Officer Training

- 2.1. Harvey Fresh will ensure that, within 2 months of the commencement of this Undertaking, the Compliance Officer attends practical trade practices training focusing on sections 52 and 53(a) of the TPA;
- 2.2. Harvey Fresh shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law; and
- 2.3. Harvey Fresh, within 14 days of completion of training, will use its best endeavors to 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 For 3 years from the commencement of this Undertaking, Harvey Fresh will cause all employees of Harvey Fresh who are involved with the formulation of Harvey Fresh's product labeling, brochures or other promotional material 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 sections 52 and 53(a) of the TPA.

#### 4. Complaints handling

- 4.1. Harvey Fresh will:
  - 4.1.1. develop procedures for recording, storing and responding to consumer complaints as to the labeling of Harvey Fresh products within 2 months of the commencement of this Undertaking; and

- 4.1.2. provide the ACCC with an outline of that complaints handling system within 2 months of the commencement of this Undertaking.

## 5. Report to Directors

- 5.1. Harvey Fresh will ensure that the Compliance Officer reports to Harvey Fresh's directors or governing body every 12 months on the continuing effectiveness of the Compliance Program.

## 6. Review

Harvey Fresh shall, at its own expense, cause an annual review of the Compliance Program elements (**Review**) to be carried out in accordance with each of the following requirements:

- 6.1. Scope of the Review — Harvey Fresh shall ensure that the Review is broad and rigorous enough to:
  - 6.1.1 provide Harvey Fresh and the ACCC with a supportable verification that Harvey Fresh has in place a Compliance Program that complies with the requirements of this Undertaking; and
  - 6.1.2 provide the Review Report and opinions detailed at point 7 below.
- 6.2. Independence of Reviewer - Harvey Fresh shall ensure that the Review is carried out by a suitably qualified, independent compliance professional or legal practitioner with expertise in trade practices law (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
  - 6.2.1 did not design or implement the Compliance Program;
  - 6.2.2 is not a present or past staff member or director of Harvey Fresh;
  - 6.2.3 has not acted and does not act for Harvey Fresh in any trade practices related matters;
  - 6.2.4 has not and does not act for, or consult to, Harvey Fresh or provide other services on trade practices related matters other than the Review; and
  - 6.2.5 has no shareholding or other interests in Harvey Fresh.
- 6.3. Evidence - Harvey Fresh shall use its best endeavors to ensure that the Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Harvey Fresh's possession or control, including without limitation:

6.3.1 enquiries of any officers or employees of Harvey Fresh; and

6.3.2 documents created by Harvey Fresh's consultants, legal practitioners and accountants for use in Harvey Fresh's Compliance Program.

6.4. Harvey Fresh shall ensure that the first Review is completed within 1 year and 1 month of the commencement of this Undertaking and that each subsequent Review is completed within 1 year thereafter. Harvey Fresh shall ensure that at least 2 reviews are completed following the commencement of this Undertaking.

## **7. Reporting**

7.1. Harvey Fresh shall use its best endeavors to ensure that the Reviewer sets out the findings of the Review in a Trade Practices Compliance Program Review Report, which will provide specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:

7.1.1 details of the evidence gathered and examined during the Review;

7.1.2 the name and relevant experience of the person appointed as Harvey Fresh's Compliance Officer;

7.1.3 the Reviewer's opinion on whether Harvey Fresh has in place effective staff training and complaints handling programs that comply with the requirements of this Undertaking; and

7.1.4 actions recommended by the Reviewer to ensure the continuing effectiveness of Harvey Fresh's Compliance Program.

7.2. Harvey Fresh shall use its best endeavors to ensure that each Trade Practices Compliance Program Review Report is completed and provided to Harvey Fresh within 1 month of completion of each Review.

7.3. Harvey Fresh shall use its best endeavors to ensure the Trade Practices Compliance Program Review Report is provided to the ACCC within 14 days of its receipt from the Reviewer.

7.4. Harvey Fresh shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC to ensure that Harvey Fresh maintains and continues to develop the Compliance Program elements in accordance with the requirements of this Undertaking.

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



9. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Harvey Fresh shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Trade Practices Compliance Program Review Report to be provided to the ACCC.