

TRADE PRACTICES ACT 1974

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

BY

SCAMONTE VENTURES PTY LTD (ACN 119 002 336)

PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Scamonte Ventures Pty Ltd (ACN 119 002 336) (**Scamonte**), of MP4 Market City, 280 Bannister Road, Canning Vale in the State of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. Scamonte was incorporated on 28 March 2006 and trades in horticulture produce as an agent and merchant in Western Australia. It trades under the business name Scalzi Produce WA.
3. Section 51AD of the TPA states that a corporation must not, in trade or commerce, contravene an applicable industry code.
4. The *Trade Practices (Horticulture Code of Conduct) Regulations 2006* (**Code**) is a prescribed industry code that came into effect on 14 May 2007 and is an applicable industry code for the purposes of section 51AD of the TPA.
5. The Code provides that a trader and a grower may only trade in horticulture produce with each other if they enter into a written agreement that complies with the Code. That agreement must contain prescribed minimum terms as set out in the Code and must be signed by both parties.
6. The Code also requires traders, whether trading as agents or merchants, to prepare, publish and make available a document that sets out the general terms and conditions under which they will trade with growers of horticulture produce (**Terms of Trade**).
7. During the period between 14 May 2007 and April 2008, Scamonte participated as an agent in trade with some growers of horticultural produce without having horticultural produce agreements in place. In the same period, Scamonte traded in horticulture produce with other growers on the basis of agreements which did not comply with all of the requirements of the Code.
8. The Terms of Trade prepared, published and made available by Scamonte did not comply with all requirements of the Code in that it did not specify the consequences of Scamonte rejecting horticultural produce.

8. The Terms of Trade prepared, published and made available by Scamonte may not have complied with all requirements of the Code in that it did not specify the consequences of Scamonte rejecting horticultural produce.
9. Scamonte acknowledges that by trading with some growers as an agent without the growers signing and returning their agreements they may not have complied with the Code and by not, publishing and making publically available Terms of Trade that may not have met all the requirements of the Code, it may have contravened the Code and section 51AD of the TPA.
10. The ACCC has agreed to accept undertakings offered by Scamonte in relation to this matter.

COMMENCEMENT OF UNDERTAKINGS

11. This undertaking comes in to effect when:
 - 11.1 The undertaking is executed by Scamonte; and
 - 11.2 The ACCC accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking, Scamonte undertakes to assume the obligations set out in paragraph 13.

UNDERTAKINGS

13. Scamonte undertakes to the ACCC for the purposes of section 87B of the TPA that it will:
 - 13.1 When trading in horticultural produce that is subject to the Code, trade only with growers who have entered into Code compliant horticulture produce agreements with them;
 - 13.2 Within 2 weeks of the commencement of this Undertaking, prepare, publish and make publicly available a document that sets out its Terms of Trade;
 - 13.3 Within 3 weeks of the commencement of this Undertaking write to growers with whom it traded without a signed and returned horticulture produce agreement, as set out in Annexure B, enclosing a copy of its Terms of Trade and proposed horticultural produce agreement;
 - 13.4 Within 7 days of writing to growers as undertaken in paragraph 13.3 it will provide the ACCC with a written statement to report whether it has complied with each undertaking in paragraph 13.3 and enclosing:

- 13.4.1 A copy of its letter to growers;
 - 13.4.2 The names and addresses of incorporated bodies to whom the letter was sent;
 - 13.4.3 A copy of its Terms of Trade; and
 - 13.4.4 a copy of its standard horticultural procedure agreement;
- 13.5 within 4 weeks of the commencement of this Undertaking, at its own expense, publish a notice in the form and content of **Annexure A** to this Undertaking in the *Countryman* newspaper, distributed in Western Australia. Scamonte will use its best endeavours to ensure that such a notice:
- 13.5.1 is published in the first 10 pages of the horticultural supplement of the newspaper
 - 13.5.2 is published on the right hand side of the newspaper;
 - 13.5.3 is published once; and
 - 13.5.4 has the specifications as set out in **Annexure A**.
- 13.6 within 6 weeks of the commencement of this Undertaking, arrange and conduct at its expense a trade practices seminar for its directors and company officers or employees authorized to trade in horticulture produce on behalf of Scamonte, and any such growers with whom it traded without a signed and returned horticulture produce agreement who may wish to attend. Such a trade practices seminar is to:
- 13.6.1 be conducted by a suitable qualified compliance professional or legal practitioner with expertise in trade practices law; and
 - 13.6.2 focus on the Code and section 51AD of the TPA;
- 13.7 within 7 days of the completion of the seminar referred to in paragraph 13.6 above, provide the ACCC with a written statement detailing:
- 13.7.1 the date of the seminar;
 - 13.7.2 the name of the person(s) that conducted the seminar;
 - 13.7.3 the names of staff members of Scamonte that attended the seminar; and
 - 13.7.4 the names and business names of incorporated bodies that attended the seminar;

ACKNOWLEDGEMENTS

14. Scamonte acknowledges that the ACCC will make this Undertaking available for public inspection.
15. Scamonte further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
16. Scamonte acknowledges and accepts that these Undertakings in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED BY

Scamonte Ventures Pty Ltd (CAN 119 002 336) and
by its authorised officers pursuant to section 127(1) of the *Corporations Act* 2001

Signature

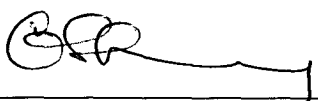

Jeffery Caribiza

Print name

General Manager

Office(s) held at Scamonte Ventures Pty Ltd

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


Graeme Julian Samuel
Chairman

This 3rd day of June 2008.

Annexure B

Dear Grower

SEMINAR ON THE HORTICULTURE CODE OF CONDUCT

On 14 May 2007 the Horticulture Code of Conduct (the Code) came into effect.

A purpose of the Code is to regulate the trade in horticulture produce. To achieve this, amongst other things, the Code requires traders and growers to enter into a written agreement, that complies with all elements of the Code, before they trade with each other.

However, since 14 May 2007 it appears that:

- we both neglected to have a signed horticulture produce agreement between us before we traded in your produce; or
- we have both traded in your produce on the basis of a signed agreement that may not have complied with all requirements of the Code; or
- we prepared, published and made available terms of trade, which formed part of our horticulture produce agreement, that did not specify what would happen if we rejected your produce.

The Australian Competition and Consumer Commission ("ACCC") has informed us that it is concerned that we both may have contravened the Code and section 51AD of the *Trade Practices Act 1974*.

The ACCC requested us to give them court enforceable undertakings to resolve these issues. As part of these undertakings we undertook to send you a copy of our new terms of trade and our proposed horticulture produce agreement. Those documents are enclosed.

We also undertook to arrange and pay for a training seminar on the Code and compliance with the *Trade Practices Act 1974* for our staff and our growers. I would urge you or your representatives to attend the seminar which will be held:

At
On

Thank you for your attention.

Regards

Scamonte Pty Ltd
Trading as Scalzi Produce WA

INFORMATION NOTICE

Scalzi Produce WA

Between 14 May 2007 and April 2008, Scamonte Ventures Pty Ltd, trading as Scalzi Produce WA may have conducted trade in Horticulture produce in breach of the requirements of the *Trade Practices (Horticulture Code of Conduct) Regulation 2006* ("Code") and the *Trade Practices Act 1974* ("TPA"). The Code has been a mandatory code, under the TPA, since 14 May 2007.

The Australian Competition & Consumer Commission ("ACCC") has expressed concerns that contrary to the requirements of the Code:

- we did not have signed horticulture produce agreements in place with some growers that we traded with as an agent;
- the signed horticulture produce agreements that we had in place with other growers do not appear to comply with all requirements of the Code; and
- the terms of trade which we prepared, published and made publicly available setting out the terms and conditions on which we were prepared to trade in horticulture produce with growers may not have complied with all elements of the Code in that it appears they did not specify what would happen if we reject any produce.

In an effort to resolve these concerns, the ACCC has requested and accepted court enforceable undertakings from us. These undertakings include that we:

- have horticulture produce agreements with growers, that comply with all requirements of the Code, before trading in horticulture produce that is subject to the Code;
- prepare, publish and make publicly available terms and conditions under which we would trade with growers of horticulture produce, including what happens if we reject produce;
- arrange and pay for a trade practices seminar for our staff and growers; and
- publish this information notice.

Further information on the Code can be found at www.accc.gov.au