

# TRADE PRACTICES ACT 1974

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

by

**MOVING JUICE PTY LTD**  
**ACN 126 328 256**

### PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Moving Juice Pty Ltd (ACN 126 328 256) (**Moving Juice**) of 461 Payneham Road, Felixstow, South Australia 5070, under section 87B of the *Trade Practices Act 1974* (**the Act**).

### BACKGROUND

2. Moving Juice carries on the business of:
  - 2.1 retailing wine produced by its director, Danniell Amadio, and his family; and
  - 2.2 retailing other wine, beer and associated products,from its retail outlet located at 461 Payneham Road, Felixstow, South Australia 5070 and via its website, [www.movingjuice.com.au](http://www.movingjuice.com.au) (**the website**).
3. On 20 February 2008, Moving Juice caused an advertisement to be published in *The Advertiser* newspaper which promoted a special offer of a 'free' and 'absolutely free' slab of Coopers Lager beer with the purchase of a dozen bottles of Dog Leg wine (**the Lager Special**).
4. During March 2008 and April 2008, Moving Juice promoted in its sales catalogue a special offer of a 'free' and 'absolutely free' slab of Coopers Pale Ale beer with the purchase of a dozen bottles of Dog Leg wine (**the Pale Ale Special**), which it represented was a saving of \$38.
5. Moving Juice admits that, in relation to the Lager Special and the Pale Ale Special the price of the dozen bottles of Dog Leg wine offered as part of the specials was increased to incorporate part or most of the cost of the beer, such that the beer was not 'free' or 'absolutely free' as represented by Moving Juice. Moving Juice also admits that, with respect to the Pale Ale Special, consumers did not save \$38 as represented by Moving Juice.
6. During April 2008, Moving Juice advertised a number of varieties of wine (**the wine**) on the website using price comparisons such as 'was \$X, now \$Y' (**the promotion**).
7. Moving Juice had neither sold, nor offered the wine for sale at the higher 'was \$X' prices since before November 2007. Moving Juice admits that the wine had not therefore been offered for sale or sold at the higher 'was \$X' prices for a reasonable period immediately before the commencement of the promotion.

8. The ACCC considers that Moving Juice's conduct by:
  - 8.1 representing that the slab of Coopers beer was 'free' and 'absolutely free' with the purchase of a dozen bottles of Dog Leg wine at a specified price, when that was not the case; and
  - 8.2 representing that consumers would save \$38, the retail price of a slab of Coopers Pale Ale, with the purchase of a dozen bottles of Dog Leg wine at a specified price, when that was not the case; and
  - 8.3 offering the wine for sale using 'was \$X, now \$Y' comparisons where the wine had not previously been offered for sale, or been sold, at the higher price 'was \$X' for a reasonable period of time immediately prior to the commencement of the promotion, is likely to contravene sections 52 and 53(e) of the Act.
9. Section 52 of the Act prohibits conduct that is misleading or deceptive or that is likely to mislead or deceive. Section 53(e) of the Act states that a corporation will not, in trade or commerce, in connexion with the supply or possible supply of goods or services make a false or misleading representation with respect to the price of goods or services.
10. Moving Juice acknowledges that by the Lager Special, the Pale Ale Special and the promotion **(the Conduct)** Moving Juice is likely to have contravened sections 52 and 53(e) of the Act.
11. Moving Juice has:
  - 11.1 ceased the Conduct; and
  - 11.2 offered this Undertaking to the ACCC pursuant to section 87B of the Act.

## COMMENCEMENT

12. This Undertaking comes into effect when:
  - 12.1 the Undertaking is executed by Moving Juice; and
  - 12.2 the ACCC accepts the Undertaking so executed, **(the commencement of this Undertaking)**.
13. Upon the commencement of this Undertaking, Moving Juice undertakes to assume the obligations set out in paragraphs 14 to 15.

## UNDERTAKINGS

14. Moving Juice hereby undertakes for the purposes of section 87B of the Act that, for a period of 3 years from the commencement of this Undertaking:
  - 14.1 Moving Juice, whether by itself or by the conduct of its directors, agents or employees, will not in trade or commerce:
    - (i) represent as part of a promotion to the effect that any product is 'free' or 'absolutely free' with the purchase of any other product at a specified price, unless that other product has by itself been offered for sale, or been sold, at that specified price for a reasonable period of time immediately prior to the promotion; and
    - (ii) offer any products for sale using comparative price representations including 'was \$X, now \$Y' if those products have not previously been offered for sale, or been sold, at the higher price for a reasonable period of time immediately prior to the commencement of the promotion.

14.2 Moving Juice's future advertising and other forms of promotion will not contain false, misleading or deceptive representations with respect to the price of goods or services.

15. Moving Juice hereby undertakes for the purposes of section 87B of the Act that it will:

15.1 within 30 days of the commencement of this Undertaking, at its own expense cause to be published within the first 15 pages of the general news section of *The Advertiser* newspaper, a corrective advertisement in the terms set out in "**Annexure A**" of this Undertaking (**the advertisement**);

15.2 use its best endeavours to ensure the advertisement has the following specifications:

- (i) it will be of a size no less than 7.5cm x 17.5cm; and
- (ii) the banner will be in at least 12 point Times New Roman white font, centred and in a black box; and
- (iii) the heading will be at least 12 point Times New Roman black font and centred; and
- (iv) the body text will be at least 10 point Times New Roman black font and left justified; and
- (v) the logo of the ACCC will be at least 20mm in height; and
- (vi) the baseline will be a minimum of 8 point Times New Roman black font and centred;

15.3 within 14 days of the publication of the advertisement, provide to the ACCC written evidence that the advertisement was published (including the entire page on which the advertisement appeared);

15.4 at its own expense, cause to be published within the first three pages of the next Moving Juice sales catalogue to be published after the commencement of this Undertaking, a corrective notice in the terms set out in "**Annexure B**" of this Undertaking (**the notice**);

15.5 use its best endeavours to ensure the notice has the following specifications:

- (i) it will be of a size no less than 19cm x 12cm; and
- (ii) the banner will be in at least 14 point Times New Roman white font, centred and in a black box; and
- (iii) the heading will be at least 18 point Times New Roman black font and centred; and
- (iv) the body text will be at least 12 point Times New Roman black font and left justified; and
- (v) the logo of the ACCC will be at least 20mm in height; and
- (vi) the baseline will be a minimum of 10 point Times New Roman black font and centred;

15.6 within 14 days of the publication of the notice, provide to the ACCC written evidence that the notice was published (including one of the sales catalogues);

15.7 within 30 days of the commencement of this Undertaking, at its own expense cause to be published and maintained for a period of not less than 2 continuous months on the website, a corrective notice in the form set out in "**Annexure C**" of this Undertaking (**the corrective**);

- 15.8 use its best endeavours to ensure that the corrective has the following specifications:
- (i) it will be accessible through a prominent one-click link on:
    - a. the 'homepage' of the website; and
    - b. on the 'events news' webpage of the website; and
  - (ii) it will be viewable in its entirety immediately on screen when the page is opened;
  - (iii) it will be entitled "Corrective Notice";
  - (iv) it will be at least 18 point Times New Roman black font, centred and in a bordered box; and
  - (v) the banner of the notice will be at least 14 point Times New Roman white font, centred and in a black box; and
  - (vi) the heading will be at least 18 point Times New Roman black font and centred; and
  - (vii) the body text will be at least 10 point Times New Roman black font on a white background and left justified; and
  - (viii) the logo of the ACCC will be at least 20mm in height; and
  - (ix) the baseline will be a minimum of 8 point Times New Roman black font and centred;
- 15.9 within 30 days of the commencement of this Undertaking, at its own expense, cause to be published in the next edition of *Winestate* magazine, an information notice in the terms set out in "**Annexure D**" of this Undertaking (**the information notice**);
- 15.10 will use its best endeavours to ensure the information notice has the following specifications:
- (i) it will be of a size no less than 5.9cm x 27cm ; and
  - (ii) the banner will be in at least 12 point Times New Roman white font, centred in a black box; and
  - (iii) the headline will be in at least 16 point Times New Roman black font; and
  - (iv) the body text will be in at least 10 point New Times Roman black font and left justified; and
  - (v) the logo of the ACCC will be at least 13.5 mm in height; and
  - (vi) the baseline will be a minimum of 8 point Times New Roman black font and centred;
- 15.11 within 14 days of the publication of the information notice, provide to the ACCC written evidence that the notice has been published (including the page on which the information notice appeared);
- 15.12 within 30 days of the commencement of this Undertaking make a donation in the amount of \$2,000 (being an estimate of the amount that Moving Juice profited from the Conduct) to Youth Opportunities Association (SA) Inc (ABN 84 615 401 812) 35a Oaklands Road, Somerton Park South Australia;
- 15.13 within 14 days of the donation being made, provide to the ACCC written evidence that the donation was made;



- 15.14 within 3 months of the commencement of this Undertaking establish and implement a Trade Practices Compliance Program in accordance with requirements set out in "Annexure E" for the employees or other persons involved in Moving Juice's business, being a program designed to minimise Moving Juice's risk of future breaches of sections 52 and 53(e) of the Act and to ensure awareness of its responsibilities and obligations in relation to the requirements of Part V of the Act;
- 15.15 maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the commencement of this Undertaking; and
- 15.16 provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure E.

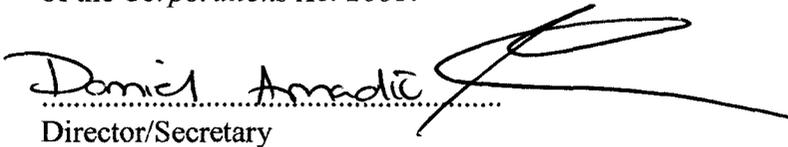
**ACKNOWLEDGMENTS**

16. Moving Juice acknowledges that:

- 16.1 the ACCC will make this Undertaking available for public inspection;
- 16.2 the ACCC may from time to time publicly refer to this Undertaking;
- 16.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED BY**

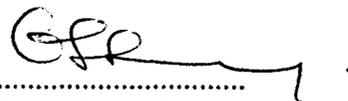
Moving Juice Pty Ltd (ACN 126 328 256) and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*:

  
.....  
Director/Secretary

*Daniel Amadić*  
.....  
Print name

This 19 day of December 2008

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

  
.....  
Graeme Julian Samuel  
Chairperson

This 24<sup>th</sup> day of December 2008

## ANNEXURE A

CORRECTIVE ADVERTISEMENT TO APPEAR IN *THE ADVERTISER*

### CORRECTIVE ADVERTISEMENT

## A correction from Moving Juice Pty Ltd

In February 2008, Moving Juice Pty Ltd advertised the following special in *The Advertiser*:

*"FREE BEER - Buy a straight or mixed dozen of Dog Leg wines and get a slab of 24 Coopers Lager absolutely FREE!"*

Our advertisement may have misled you because the price of a dozen bottles of Dog Leg wine sold in the special was increased from its normal price to incorporate most of the cost of the beer. The beer was therefore not 'free' or 'absolutely free'.

Moving Juice has cooperated fully with the ACCC to address its concerns that the advertisement was likely to mislead or deceive consumers and contravene the consumer protection provisions of the Trade Practices Act.

The ACCC has accepted a court enforceable undertaking offered by Moving Juice, which can be viewed at [www.accc.gov.au](http://www.accc.gov.au). As part of the undertaking, Moving Juice will implement a trade practices compliance program to help ensure we do not mislead or deceive consumers in the future.



**Australian  
Competition &  
Consumer  
Commission**

This corrective advertisement has been placed and paid for by Moving Juice Pty Ltd pursuant to undertakings accepted by the ACCC

A handwritten signature or mark in the bottom right corner of the page.

## ANNEXURE B

### CORRECTIVE NOTICE TO APPEAR IN THE MOVING JUICE CATALOGUE

#### CORRECTIVE NOTICE

In our March and April 2008 sales catalogue, we included the following promotion:

*“Buy a straight or mixed dozen, minimum 6 bottles per variety of Dog Leg wines and get a slab of Coopers Pale Ale beer absolutely free.”*

*FREE BEER Save \$38”*

Our promotion may have misled you because the price of a dozen bottles of Dog Leg wine sold in the special was increased from its normal price to incorporate most or part of the cost of the beer. The beer was therefore not ‘free’ or ‘absolutely free’ and you were not saving \$38.

We have cooperated fully with the Australian Competition and Consumer Commission to address its concerns that the promotion was likely to mislead or deceive consumers and contravene the consumer protection provisions of the Trade Practices Act. The ACCC has accepted a court enforceable undertaking offered by us, which can be viewed at [www.accc.gov.au](http://www.accc.gov.au). As part of the undertaking, we will implement a trade practices compliance program to help ensure we do not mislead or deceive consumers in the future.



**Australian  
Competition &  
Consumer  
Commission**

This corrective notice has been placed pursuant to undertakings accepted by the ACCC

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character.

## ANNEXURE C

### CORRECTIVE NOTICE TO APPEAR ON THE MOVING JUICE WEBSITE

The link shall be in the following form:



The Corrective Notice shall be in the following terms:

### CORRECTIVE NOTICE

## A correction from Moving Juice

During February, March and April 2008, we promoted two Coopers beer and Dog Leg wine specials where consumers would receive a 'free' and 'absolutely free' slab of Coopers beer with the purchase of a dozen bottles of Dog Leg wine.

Our promotions may have misled you because the price of a dozen bottles of Dog Leg wine sold in the specials was increased from its normal price to incorporate most or part of the cost of the beer. The beer was therefore not 'free' or 'absolutely free'.

During April 2008, we advertised certain varieties of wine on our website using 'was \$X Now \$Y'. We had not offered the wine for sale, nor sold the wine, at the higher 'was' price since before November 2007.

You may have been misled by the 'Was \$X Now \$Y' representations because you may have thought the price other consumers had paid reasonably recently for that wine was the higher 'was' price, when that was not the case.

The Australian Competition and Consumer Commission (ACCC) approached us with its concerns that these advertising practices were likely to mislead or deceive consumers and contravene the consumer protection provisions of the Trade Practices Act.

We have cooperated fully with the ACCC to address its concerns in this matter and the ACCC has accepted a court enforceable undertaking offered by us, which can be viewed at [www.accc.gov.au](http://www.accc.gov.au). As a part of the undertaking, we will implement a Trade Practices Compliance Program to help ensure we do not mislead or deceive consumers in the future. We have also undertaken not to engage in similar conduct in the future.



**Australian  
Competition &  
Consumer  
Commission**

This corrective notice has been placed pursuant to undertakings accepted by the ACCC



## A message from Moving Juice

During February, March and April 2008 Moving Juice, a South Australian wine retailer, promoted two Coopers beer and Dog Leg wine specials by representing that consumers would receive a 'free' and 'absolutely free' slab of Coopers beer with the purchase of a dozen bottles of Dog Leg wine. The price of a dozen bottles of Dog Leg wine sold in the specials was increased from its normal price to incorporate most or part of the cost of the beer. The beer was therefore not 'free' or 'absolutely free'.

During April 2008, Moving Juice advertised certain varieties of wine on our website using 'Was \$X Now \$Y' representations. Moving Juice had not offered the wine for sale, nor sold the wine, at a higher 'was' price since before November 2007.

The ACCC subsequently approached Moving Juice with its concerns that these advertising practices were likely to mislead or deceive consumers and contravene the Trade Practices Act.

Moving Juice cooperated fully with the ACCC to address its concerns in this matter. To ensure this does not happen again, the ACCC has accepted a court enforceable undertaking offered by Moving Juice, which can be viewed at [www.accc.gov.au](http://www.accc.gov.au). As a part of the undertaking, Moving Juice undertook not to engage in similar conduct in the future and to implement a Trade Practices Compliance Program.

Moving Juice seeks to alert other wine retailers, particularly producers looking to market their wine direct to the public, to be vigilant about putting in place systems to ensure that they do not mislead consumers and contravene the Trade Practices Act when marketing their wine.



Australian  
Competition &  
Consumer  
Commission

This information notice has been placed and paid for by Moving Juice Pty Ltd pursuant to undertakings accepted by the ACCC

INFORMATION NOTICE  
TO APPEAR IN WINESTATE MAGAZINE

## ANNEXURE E

### TRADE PRACTICES COMPLIANCE PROGRAM

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

#### 1. **Appointments**

- 1.1. Within one month of the commencement of this Undertaking Moving Juice shall 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. Moving Juice shall ensure that, within 3 months of the Undertaking coming into effect, the Compliance Officer attends practical trade practices training focusing on Part V of the *Trade Practices Act 1974 (the Act)* in particular the requirements of sections 52 and 53 of the Act.
- 2.2. Moving Juice shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Moving Juice, within 14 days of the completion of the training, shall 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. Moving Juice shall cause all employees of Moving Juice whose duties could result in them being concerned with conduct that may contravene Part V of the Act, 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 Part V of the Act.

#### 4. **Complaints handling** – Moving Juice shall:

- 4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the commencement of this Undertaking; and
- 4.2. provide the ACCC with an outline of the complaint handling system within 2 months of the commencement of this Undertaking.

#### 5. Moving Juice shall ensure that the Compliance Officer reports to their director(s) or governing body every 12 months on the continuing effectiveness of the Compliance Program.

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