

**TRADE PRACTICES ACT 1974****VARIATION TO UNDERTAKING GIVEN TO THE AUSTRALIAN  
COMPETITION & CONSUMER COMMISSION FOR THE PURPOSES OF  
SECTION 87B****BY****CALCORP (AUSTRALIA) PTY LTD ACN 103 572 738  
AND ANTONIO GIANLUCA DATTILO****PERSONS GIVING THIS VARIATION TO UNDERTAKING**

1. This variation to Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Calcorp (Australia) Pty Ltd ACN 103 572 738 (**Calcorp**) of 39 Ruby Street, Balwyn in Victoria, and Antonio Gianluca Dattilo (**Mr Dattilo**) of 24 Essex Road, Surrey Hills in Victoria under section 87B of the *Trade Practices Act 1974* (TPA).

**BACKGROUND**

2. On 28 September 2009, the ACCC accepted an undertaking from Calcorp and Mr Dattilo in accordance with section 87B of the TPA (**the Undertaking**).
3. The Undertaking related to Calcorp's conduct in supplying, between about August 2007 and May 2009, edible oil to Coles supermarkets labelled as extra virgin olive oil when in fact testing indicated that the oil was not extra virgin olive oil.
4. Mr Dattilo was the manager of Calcorp at the time and authorised the labelling of the edible oil as extra virgin olive oil.
5. Section 52 of the TPA prohibits a company from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.
6. Section 53(a) of the TPA prohibits a corporation from, in connexion with the supply of goods or in connexion with the promotion of the supply or use of goods, falsely representing that goods are of a particular standard, quality, value, grade, composition, style or model or have had had a particular history or particular previous use.
7. Amongst other things the Undertaking required:
  - a. Calcorp to establish and implement a Trade Practices Compliance Program covering sections 52 and 53 of the TPA and to implement that Program (including training and the establishment of a

- complaints handling system) for 3 years from the date of the Undertaking coming into effect;
- b. Mr Dattilo to attend practical trade practices training focussing on sections 52 and 53 of the TPA within 3 months of the Undertaking coming into effect and then at least once a year for a period of three years for so long as he owned (legally or beneficially) shares in, was employed or engaged by, or was otherwise directly concerned in any company that supplies edible oil in Australia.
8. Since the Undertaking was accepted, Calcorp and Mr Dattilo's circumstances have changed. Calcorp is no longer trading. Mr Dattilo is not currently involved with any company that supplies goods or services in Australia, including edible oil.
  9. As a result of their changed circumstances, Calcorp and Mr Dattilo have requested that the Undertaking be varied so that performance of the obligations outlined in paragraph 7 above are subject to Calcorp and Mr Dattilo recommencing trading activities.
  10. The ACCC has agreed, pursuant to section 87B of the TPA, to accept this variation to the Undertaking (**Variation**).

## **COMMENCEMENT**

11. This Variation comes into effect when:
  - a. this Variation is executed by each of Calcorp and Mr Dattilo; and
  - b. the ACCC accepts this Variation so executed.

## **VARIATION**

12. The Undertaking is varied by:
  - a. deleting paragraphs 23 and 24; and
  - b. inserting the following new paragraphs:

“23. Calcorp undertakes to the ACCC for the purposes of section 87B of the TPA that prior to recommencing trading it will establish and implement a Trade Practices Compliance Program covering sections 52 and 53 of the TPA in accordance with the requirements set out below and will maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date it recommences trading:

### ***A. Training***

- A.1. At least 28 days before recommencing trading, and thereafter at least once a year for a period of three years, all owners, directors, officers and employees of Calcorp will attend practical trade practices training designed to minimise Calcorp's risk of future breaches of sections 52

and 53 of the TPA and to ensure awareness of its responsibilities and obligations in relation to the requirements of sections 52 and 53 of the TPA.

A.2. Calcorp will ensure that the training referred to in paragraph A.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law.

A.3. Calcorp will provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph A.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

**B. *Complaints handling***

B.1. Calcorp will:

B.1.1. develop procedures for recording, storing and responding to trade practices complaints at least 28 days before recommencing trading; and

B.1.2. provide the ACCC with an outline of the complaint handling system developed at least 14 days before recommencing trading.

C. If requested by the ACCC, Calcorp will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Trade Practices Compliance Program.

24. Mr Dattilo undertakes to the ACCC for the purposes of section 87B of the TPA that he will not own (legally or beneficially) shares in, be employed or engaged by, or be otherwise directly concerned in any company that supplies edible oil in Australia unless he:

- a. at least 28 before doing so, and thereafter at least once a year for a period of three years, attends practical trade practices training focussing on sections 52 and 53 of the TPA;
- b. ensures that the training referred to in paragraph 24a above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law; and
- c. provides a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 24a above to the ACCC within 14 days of completion of the training verifying that such training has occurred.”

**DEFINITIONS**

13. In this Variation:

‘supply’ has the meaning given by section 4 of the TPA, which includes:

- (a) in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services – provide, grant or confer,

and ‘supplies’ has a corresponding meaning;

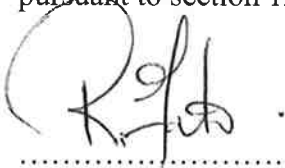
‘trading’ means the activity of supplying goods or services, but excludes the transfer of goods other than edible oils to a related body corporate.

**ACKNOWLEDGEMENTS**

23. CalcCorp and Mr Dattilo each acknowledge that:

- a. the ACCC will make this Variation available for public inspection;
- b. the ACCC will from time to time publicly refer to this Variation;
- c. this Variation in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**EXECUTED by CALCORP (AUSTRALIA) PTY LTD (ACN 103 572 738)**  
pursuant to section 127(1) of the *Corporations Act 2001*



.....  
Signature of sole director/secretary

ROSE FATO  
.....

Name of sole director/secretary (printed)

This 23<sup>rd</sup> day of SEPTEMBER 2010

**EXECUTED by ANTONIO GIANLUCA DATTILO**



.....  
Signature of Antonio Gianluca Dattilo

This 23<sup>rd</sup> day of SEPTEMBER 2010

**ACCEPTED** by the **AUSTRALIAN COMPETITION & CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*



.....  
Chairperson (Graeme Julian Samuel)

This 11<sup>th</sup> day of October 2010