

TRADE PRACTICES ACT 1974

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

BY

GALDAN INVESTMENTS PTY LTD

(ACN 083 016 451)

Persons giving this undertaking

- (1) This undertaking is given to the Australian Competition and Consumer Commission (the **ACCC**) by Galdan Investments Pty Ltd (ACN 083 016 451) of Shop 2 Abbey Court, 856-860 Old Princes Highway, Sutherland, in the State of New South Wales for the purposes of section 87B of the *Trade Practices Act 1974* (the *Act*).

Background

- (2) Galdan Investments Pty Ltd (**Galdan**) was incorporated on 17 June 1998 and trades in horticulture produce, namely bananas, from the Sydney Markets in New South Wales. It trades under the business name Tropic Banana Company at Stand 35-36, E Shed, at the Sydney Markets and has done so since 1999.
- (3) Section 51AD of the Act provides that a corporation must not, in trade or commerce, contravene an applicable industry code. The *Trade Practices (Horticulture Code of Conduct) Regulations 2006* (the *Code*) is a prescribed industry code for the purposes of section 51AD of the Act.
- (4) The Code defines a trader to be either an 'agent' or a 'merchant' for the purposes of the Code. Galdan only trades in the capacity of an 'agent' as defined in the Code.
- (5) The Code provides that a trader and a grower may only trade in horticulture produce if they enter into a written agreement that complies with the Code, namely a Horticulture Produce Agreement (**HPA**). An HPA must contain prescribed minimum terms as set out in the Code and be signed by both parties.
- (6) The Code further provides that a trader must:
  - (i) prepare, publish and make publicly available a document that sets out the general terms and conditions under which it will trade with growers of horticulture produce (**Terms of Trade**); and
  - (ii) give each of its growers a statement for the reporting period, specifying for the grower's produce received by the trader during the reporting period and other prescribed information as set out in the Code.
- (7) Following the investigation of a grower complaint the ACCC considers that since 14 May 2007 Galdan has:
  - (i) traded in horticulture produce with growers without entering into HPAs with those growers;

- (ii) not prepared, published or made publicly available its Terms of Trade; and
- (iii) not given growers with whom it trades a statement for reporting periods as prescribed by the Code

and has thereby contravened the Code and section 51AD of the Act.

- (8) Galdan acknowledges that by engaging in the conduct set out in paragraph 7 it has contravened the Code and section 51AD of the Act.
- (9) The ACCC has agreed to accept undertakings pursuant to section 87B of the Act as offered by Galdan in relation to this matter.

#### **Commencement of undertaking**

- (10) This undertaking comes into effect when:
  - (i) the undertaking is executed by Galdan; and
  - (ii) the ACCC accepts the undertaking so executed.
- (11) Upon the commencement of this undertaking, Galdan undertakes to assume the obligations set out in paragraph 12 below.

#### **Undertakings**

- (12) Galdan undertakes for the purposes of section 87B of the Act:
  - (i) not to trade in horticulture produce that is subject to the Code with any grower unless it has entered into a Code compliant HPA with the relevant grower;
  - (ii) within 2 weeks of the commencement of this Undertaking, to prepare, publish and make publicly available a document that sets out its Terms of Trade in accordance with Part 2 of the Code;
  - (iii) within 3 weeks of the commencement of this Undertaking, to send a letter to each grower with whom it has traded since 14 May 2007 in the form set out in **Annexure A** to this Undertaking, enclosing a copy of its Terms of Trade and a proposed HPA;
  - (iv) within 1 week of writing to the growers pursuant to the Undertaking in paragraph 12(iii), to provide to the ACCC a written statement reporting on its compliance with each undertaking in paragraph 12(ii) and 12(iii) and enclosing:
    - a) a copy of its letter the growers;
    - b) the names and addresses of the growers to whom the letter was sent;
    - c) a copy of its standard HPA; and
    - d) a copy of its Terms of Trade, together with advice as to where its Terms of Trade are publicly available.
  - (v) within 6 weeks of the commencement of this Undertaking, at its own expense, to:
    - a) arrange for its director and any such employees who are authorised to trade in horticulture produce on its behalf, to attend trade practices compliance training. Such training is to:

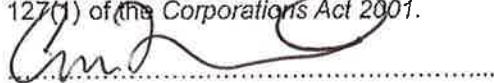
- i. be conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law; and
  - ii. focus on the Code and section 51AD of the Act.
- b) arrange for the production of a DVD containing a presentation by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law outlining the effect and operation of the Code and Section 51AD of the Act ("Training DVD").
- (vi) within 1 week of completion of the training referred to in paragraph 12(v)(a), to provide the ACCC with a written statement, authored and signed by the compliance professional or legal practitioner responsible for the training, detailing:
  - a) the date of the training;
  - b) the name and business name of the person(s) who conducted the training; and
  - c) the names of the Galdan director and employees who attended the training.
- (vii) within 1 week of producing the Training DVD referred to in paragraph 12(v)(b):
  - a) send a copy of the Training DVD to all growers with whom it has traded since 14 May 2007; and
  - b) provide the ACCC with a written statement detailing the names and business names of the growers to whom a copy of the Training DVD has been provided.
- (viii) within 4 weeks of the commencement of this Undertaking, at its own expense, to publish an information notice in the form and content of **Annexure B** to this Undertaking in *Queensland Country Life* newspaper and to use its best endeavours to ensure that such notice:
  - a) is published in the 'Horticulture' section of the newspaper;
  - b) is published on the right hand side of the newspaper;
  - c) is published once; and
  - d) has the specifications as set out in **Annexure B**.
- (ix) within 1 week of the publication of the information notice referred to in paragraph 12(viii), to provide the ACCC with a copy of the information notice as it appears in the *Queensland Country Life* newspaper.

#### Acknowledgements

- (13) Galdan acknowledges that:
- (i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
  - (ii) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
  - (iii) this Undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

Executed by

Galdan Investments Pty Ltd (ACN 083 016 451) by its authorised officer pursuant to section 127(1) of the Corporations Act 2001.



Signature

E.D. DANIELE


Print name

DIRECTOR

Office(s) held at Galdan Investments Pty Ltd

This 22<sup>ND</sup> day of DECEMBER 2010.

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



Michael Schaper  
Acting Chairman

GRAEME SAMUEL

This 18<sup>th</sup> day of January 2011.