



TRADE PRACTICES ACT 1974

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

BY

**HOLMAC SALES PTY LTD
(ACN 074 428 989)**

PERSONS GIVING THIS UNDERTAKING

1. This undertaking is given to the Australian Competition & Consumer Commission (ACCC) by Holmac Sales Pty Ltd (ACN 074 428 989) (Holmac), 41 Sylvan Cres, Leeming, in the state of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA)

BACKGROUND

2. Holmac is incorporated in Western Australia and carries on business as a distributor of Dewlands fruit juice products. Holmac imports the Dewland fruit juice products from South Africa.
3. There are numerous types of fruit juice sold within the Dewlands range. Those fruit juices include mixed berry, lychee, fruit cocktail, red grape, ruby grapefruit, guava, mango, apple, pineapple, peach, passionfruit and orange.
4. Between July 2003 and January 2005 Holmac distributed the Dewlands range to outlets across Australia. The packaging of the Dewlands fruit juice range contained the following representations: -
 - a characterising title (such as 'Guava Juice') in bold white text
 - '100% Fruit Juice' in black text but made prominent through the use of a yellow background
 - 'Vitamin C Enriched' in black text but also made prominent through the use of a yellow background
 - '100% Fruit Juice Blend made from concentrate' in black text and placed on a dark green background, creating little contrast to adequately distinguish the representation
 - a pictorial representation of the characterising fruit only
 - an over-label containing the representation 'Product contains...(which includes the characterising fruit and a second fruit)'
5. The following table sets out the percentage of fruit ingredients in the relevant fruit juices:

Product	Ingredients
100% Fruit Juice –Apple Juice	Apple juice 100% Vitamin C

100% Fruit Juice –Fruit Cocktail	Grape Juice 67% Orange Juice 19% Guava juice 9% Peach juice 3% Mango Juice 2% Vitamin C
100% Fruit Juice –Guava Juice	Grape juice 78% Guava Juice 22% Vitamin C
100% Fruit Juice –Litchi Juice	Grape Juice 85% Litchi Juice 15% Vitamin C
100% Fruit Juice –Orange Juice	Orange juice with cells 75% Grape juice 25% Vitamin C
100% Fruit Juice –Mango Juice	Grape juice 81% Mango Juice 19% Vitamin C
100% Fruit Juice – Passionfruit Juice	Apple juice 82% Passionfruit juice 18% Vitamin C
100% Fruit Juice –Peach Juice	Grape Juice 73% Peach juice 27% Vitamin C
100% Fruit Juice –Pineapple Juice	Pineapple juice 54% Grape juice 46% Vitamin C
100% Fruit Juice –Red Grape Juice	Grape juice 100% Vitamin C
100% Fruit Juice –Ruby Grapefruit Juice	Apple juice 51% Ruby Grapefruit 49% Vitamin C

6. Between September 2003 and October 2004 the ACCC received a number of complaints from consumers regarding representations made on the packaging of the Dewlands ‘100% fruit juice’ range. As a result of these complaints and subsequent investigation, the ACCC raised concerns with Holmac regarding possible breaches of the TPA.
7. The ACCC was concerned that the combined use of representations placed on the packaging of the Dewlands range fruit juices created the overall impression that each juice contains 100% of the respective characterising ingredient, when this is not the case. The ACCC was also concerned that the products were described as “100% fruit juice” when the addition of vitamin C mean this was not the case.

8. After further investigation, and in consultation with the Western Australian Department of Health, the ACCC came to the view that the Holmac had engaged in conduct which was in breach of sections 52, 53(a) and 55 of the TPA.
9. Holmac acknowledges the ACCC's concerns that the combined use of representations placed on the packaging of the Dewlands fruit juice range created the overall impression that each juice contains 100% of the respective characterising ingredient, when that was not the case. Holmac also acknowledges the ACCC's concerns that the products were described as "100% fruit juice" when the addition of vitamin C mean this was not the case.
10. Holmac acknowledges that its conduct may have misled consumers and that such conduct may have been in contravention of sections 52, 53(a) and 55 of the TPA.
11. Holmac has cooperated with the ACCC to resolve the ACCC's concerns and has offered undertakings pursuant to section 87B of the TPA.

COMMENCEMENT OF UNDERTAKINGS

12. This undertaking comes into effect when:
 - a. The Undertaking is executed by Holmac; and
 - b. The ACCC accepts the undertaking so executed.

Upon the commencement of this Undertaking, Holmac agrees to assume the obligations set out in paragraph 13.

UNDERTAKINGS

13. Holmac undertakes for the purposes of section 87B of the TPA:
 - a. it will not, whether by itself, its servants or agents, make any representation in trade or commerce in relation to the supply of, the offering of supply, the packaging, the labelling or the promotion of any fruit juice product which:
 - i. creates an overall impression that a juice product contains 100% of a particular fruit juice, when the juice product in fact contains numerous types of fruit juice;
 - ii. represents a juice product to be 100% Fruit Juice when vitamin C has been added to that product.
 - b. It will at its own expense cause to be published in a major daily newspaper in each State or Territory of Australia in which the Dewlands fruit juice range is sold, an advertisement formed in terms of

annexure A to this undertaking and shall use its best endeavours to ensure that such advertisement is:

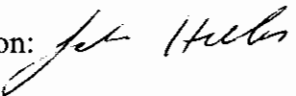
- (i) of a size not less than two columns wide by 15cm deep;
 - (ii) in text which is in a type size of no less than 10 point;
 - (iii) within the first 20 pages of each newspaper; and
 - (iv) published once in each newspaper with the notice appearing within 14 days of the signing of this undertaking; and
- c. within three months of this Undertaking coming into effect, to use its best endeavours to implement and maintain a Trade Practices Compliance Program (Compliance Program) in accordance with the provisions of Annexure B to this Undertaking for the purpose of ensuring that the officers and employees of Holmac are aware of their responsibilities and obligations under section 52, 53 and 55 of the TPA.

ACKNOWLEDGEMENTS

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

IN WITNESS TO THE UNDERTAKINGS

Signed for and behalf of **Holmac Sales Pty Ltd** (ACN 074 428 989):

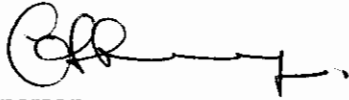
Signature of Authorised Person: 

Office held: *MD*

Name of Authorised Person *John Hollis*

Date: *13-5-05*

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



Chairperson

Date *23rd May 2005*

ANNEXURE A

Dewlands Juices- Misleading Labels

The Australian Competition and Consumer Commission (ACCC) has raised concerns about claims Dewlands Juices made on the labelling of its fruit juices. The Dewlands range of fruit juices is imported and distributed by Holmac Sales Pty Ltd.

The labelling on the Dewlands range of fruit juices contained the words "100% Fruit Juice" along with pictures of specific fruits. The words "Vitamin C Enriched" also appear on the front of the packaging.

The ACCC was concerned that the packaging of the Dewlands fruit juice range created the overall impression that the juices contained 100% of a particular fruit when that was not the case. The ACCC was also concerned that the products were described as 100% fruit juice when in fact vitamin C had been added.

Holmac Sales acknowledges that consumers may have been misled about the content of the juices and have relabelled its range of fruit juices. The Dewlands labels will now clearly show what fruits are contained in the juices.

For further information please contact Mr John Hollis at:

Holmac Sales Ltd
Distributor of Dewlands Juices
(insert address here)
(insert telephone # here)

[insert ACCC logo here]

This corrective advertisement has been paid for by Holmac Sales at the request of the Australian Competition and Consumer Commission (ACCC).

ANNEXURE B

COMPLIANCE PROGRAM ELEMENT OF Section 87B UNDERTAKINGS

1. In order to ensure, as best it can, that Holmac Sales Pty Ltd's (Holmac) future conduct does not contravene sections 52, 53 or 55 of the *Trade Practices Act 1974* (TPA), Holmac will implement, at its own expense, a compliance program consistent with AS-3806-19981 (hereafter "the compliance program").
2. Holmac undertakes that, within 28 days of the date of execution of this undertaking, it will identify and retain an independent compliance professional with expertise in the TPA (compliance professional) for the purpose of developing and implementing the compliance program.
3. Holmac undertakes that it will implement such a compliance program within 90 days of the date of execution of this Undertaking.
4. The compliance program will remain in force for a minimum period of three years from the date of its implementation, and during that time the ACCC may request its amendment to accord with relevant changes to the TPA
5. As part of the implementation of the Compliance program, Holmac will:
 - (a) establish a complaint handling system;
 - (b) develop a register of TPA related breaches and/ or complaints; and
 - (c) use its best endeavours to ensure that compliance with the TPA becomes part of normal business practice in the company.
6. At the end of each 12 month period following the execution of this undertaking, Holmac will cause, at its own expense, an independent auditor who is a compliance professional acceptable to the ACCC, to review the compliance program and report to the ACCC as follows:
 - (a) The auditor will conduct a critical review of both the compliance management system and its effectiveness in securing compliance with the TPA;
 - (b) The auditor will make such recommendations as he/she considers necessary to ensure that the compliance program has been implemented throughout Holmac and is effective in securing compliance with sections 52, 53 and 55 of the TPA by Holmac;
 - (c) The auditor will provide the ACCC with a copy of the audit report no later than 30 days after the anniversary of the execution of this undertaking; and

- (d) Holmac will implement promptly and with due diligence any recommendations which the auditor may make.
- 7. The ACCC may request for an audit of the compliance system, at Holmac's expense, between the regular audit periods described under Clause 5 above, if the ACCC has sufficient reason to suspect that the compliance program is not being implemented effectively.
- 8. Holmac will, if requested by the ACCC, provide documents and information in respect of matters which are the subject of the compliance program resulting from this undertaking.