TRADE PRACTICES ACT 1974

AND

COMPETITION AND CONSUMER ACT 2010

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

by

Spring Gully Foods Pty Ltd

ACN. 007 654 211

Persons giving this undertaking

(1) This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Spring Gully Foods Pty Ltd (ACN. 007 654 211) (**Spring Gully**) of 182-184 Cavan Road, Dry Creek, South Australia, for the purposes of:

(a) section 87B of the Trade Practices Act 1974 (**the TPA**), as applied by Item 6 of Schedule 7 of the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010*, for conduct engaged in prior to 1 January 2011; and

(b) section 87B of the *Competition and Consumer Act 2010* (**the CCA**), for conduct engaged in from 1 January 2011.

Background

(2) Spring Gully carries on the business of manufacturing pickles, sauces, relishes, jams, fruit spreads and honey.

(3) During the period from July 2006 and continuing at the date of this Undertaking, Spring Gully has manufactured and supplied 'Just Organic' branded honey in 500g jars for sale exclusively through Aldi supermarkets. Spring Gully controlled the composition of the product and was involved in developing the content of the labels affixed to the jars of 'Just Organic' honey. Aldi approved the content of the labels.

(4) During the period from January 2008 to December 2010 Spring Gully manufactured and supplied 'Just Organic' honey with 3 different labels for sale through Aldi supermarkets as follows:

(a) during the period from July 2006 to July 2008 the label included the following statement:

"*This Pure Organic Honey, rich in natural goodness, is produced on Kangaroo Island by the world's only remaining pure strain of the Ligurian honeybee*" (**Label A**).

(b) during the period from April 2008 to July 2010 the label included the following statement:

"*This Pure Organic Honey is made with honey produced on Kangaroo Island, home to the world's only remaining pure strain of the Ligurian honeybee*" (**Label B**).

(c) during the period from August 2010 to December 2010 the label included the following statement:

"*This Pure Organic Honey is made with a blend of Australian organic certified honey and organic honey produced on Kangaroo Island, home to the world's only remaining pure strain of the Ligurian honeybee*" (**Label C**).

A copy of Labels A, B and C is at **Annexure A**.

(5) The ACCC considers that:

(a) the statement included on Label A referred to above; and

(b) the statement included on Label B referred to above,

represented to consumers that 'Just Organic' honey contained 100% Kangaroo Island honey; and

(c) the statement included on Label C referred to above represented to consumers that 'Just Organic' honey contained a not insignificant amount of Kangaroo Island honey.

(6) Following a request from the ACCC, Spring Gully advised the ACCC that:

(a) during the period from January 2008 to July 2008, 'Just Organic' honey with Label A contained between 1.18% and 42.53% Kangaroo Island honey;

(b) 'Just Organic' honey with Label B contained between 0.84% and 50.07% Kangaroo Island honey, with the exception of one batch of the product that contained 100% Kangaroo Island honey;

(c) 'Just Organic' honey with Label C contained between 0.076% and 10.13% Kangaroo Island honey.

(7) The ACCC considers that, by reason of the matters described in paragraphs 4 to 6 above, Spring Gully has:

(a) engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 52 of the TPA;

(b) in connection with the supply or possible supply of goods, or in connection with the promotion of the supply of goods, falsely represented that goods were of a particular composition in contravention of section 53(a) of the TPA; and

(c) engaged in conduct that was liable to mislead the public as to the manufacturing process or characteristics of goods in contravention of section 55 of the TPA.

(8) In response to the ACCC's investigation, Spring Gully has:

(a) acknowledged that its conduct is likely to have contravened sections 52, 53(a) and 55 of the TPA; and

(b) offered this Undertaking to the ACCC.

Commencement of Undertaking

(9) This Undertaking comes into effect when:

(i) the Undertaking is executed by Spring Gully; and

(ii) the ACCC accepts the undertaking so executed.

(10) Upon the commencement of this Undertaking, Spring Gully undertakes to assume and act in accordance with the obligations set out in paragraph 11 below for a period of three years from the date the Undertaking comes into effect.

Undertakings

(11) Spring Gully undertakes for the purposes of section 87B of the TPA and section 87B of the CCA that:

(i) it will not, in trade or commerce:

(a) represent that honey products are sourced from a particular location or region when those products are not sourced 100% from the particular location or region;

(b) represent that honey products are a blend of honey with reference to a particular location or region when those products contain an insignificant amount of honey from the particular location or region;

(ii) that it will:

(a) publish, within 21 days of the date of the commencement of this Undertaking on the website, www.springgullyfoods.com.au, a prominent link headed 'Corrective Notice' which, when clicked on, will display a corrective notice as set out in **Annexure B** to this Undertaking. The link will be maintained for a period of 3 months from the date of the commencement of this Undertaking. The corrective notice will remain open on the user's browser until he or she closes the link;

(b) cause to be published, within 21 days of the date of the commencement of this Undertaking the a corrective notice as set out in **Annexure B** to this Undertaking, a size not less than approximately 15cm high by 2 columns wide and within the first 10 pages within the following publications:

- The Herald Sun – Melbourne;
- The Sunday Telegraph – Sydney;
- The Sunday Mail – Brisbane;
- The Canberra Times (Sunday edition) – Canberra;

(c) establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure C** to this Undertaking, being a program designed to minimise Spring Gully's risk of future breaches of the Australian Consumer Law (**the ACL**), contained in Schedule 2 of the CCA, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 18, 29(a) and 33 of the ACL within 3 months of the date of this Undertaking coming into effect;

(d) maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect;

(e) provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure C**.

Acknowledgments

(12) Spring Gully acknowledges that:

(i) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 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;

(iii) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and

(iv) a summary of the ACCC Compliance Program review reports referred to in **Annexure C** of the Undertaking may be held with this Undertaking in the public register.

Executed by

Spring Gully Foods Pty Ltd ACN 007 654 211 pursuant to section 127(1) of the *Corporations Act 2001*.

.....	.....
Signature of Secretary/Director	Signature of Director
KEVIN GEORGE WEBB	BRYAN McMILLAN
(Print) Name of Secretary/Director	(Print) Name of Director
This 18TH day of JULY 2011	

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO:

(A) SECTION 87B OF THE *TRADE PRACTICES ACT 1974* AS APPLIED BY ITEM 6 OF SCHEDULE 7 OF THE *TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) ACT (NO.2) 2010*, FOR CONDUCT PRIOR TO 1 JANUARY 2011; AND

(B) SECTION 87B OF THE *COMPETITION AND CONSUMER ACT 2010* FOR CONDUCT FROM 1 JANUARY 2011.

.....

Graeme Julian Samuel
Chairman

This 28th day of July 2011

ANNEXURE A

LABEL A

LABEL B

LABEL C

ANNEXURE B

CORRECTIVE NOTICE

[Spring Gully Logo] [ACCC Logo]

Spring Gully apologises to customers of Aldi for making false representations between about January 2008 and December 2010 in relation to the composition of 'Just Organic' honey sold exclusively through Aldi supermarkets.

Spring Gully has manufactured and supplied 'Just Organic' honey in 500g jars to Aldi under the Aldi brand name 'Just Organic' since mid 2006.

From January 2008 to July 2010 the label we placed on jars of 'Just Organic' honey indicated that it contained 100% honey from Kangaroo Island when this was not the case. In fact, it contained between 0.84% to 50.07% honey from Kangaroo Island mixed with Australian organic honey from other regions, with the exception of one batch which contained 100% honey from Kangaroo Island.

From July 2010 to December 2010 the label we placed on jars of 'Just Organic' honey indicated that it contained a blend of honey including honey from Kangaroo Island when it only contained between 0.076% and 10.13% of honey from Kangaroo Island.

The ACCC raised its concerns with Spring Gully that the labels on the product were likely to mislead consumers in breach of sections 52, 53(a) and 55 of the Trade Practices Act 1974 (which, on 1 January 2011 was renamed the Competition and Consumer Act 2010 and amended to include the Australian Consumer Law).

Spring Gully acknowledges that it is likely to have contravened the Trade Practices Act 1974.

As a result of the ACCC's investigation, Spring Gully has provided the ACCC with a court enforceable undertaking.

Full details of the undertaking can be found on the Public Register on the ACCC's website at www.accc.gov.au.

ANNEXURE C

TRADE PRACTICES COMPLIANCE PROGRAM

Spring Gully Foods Pty Ltd (**Spring Gully**) will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date of the Undertaking coming into effect Spring Gully will appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program, and who reports directly to the company Board or governing body (**the Compliance Officer**).

2. Spring Gully shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within 3 months of the Undertaking coming into effect, for the purposes set out in paragraph 3.

3. Spring Gully shall instruct the Compliance Advisor to conduct a risk assessment (**the Risk Assessment**) in accordance with 3.1 – 3.4 below:

   3.1. identify the areas where Spring Gully is at risk of breaching sections 18, 29(a) and 33 of the Australian Consumer Law (**the ACL**), contained in Schedule 2 to the *Competition and Consumer Act 2010*;

   3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Spring Gully should they occur;

   3.3. identify where there may be gaps in Spring Gully's existing procedures for managing these risks; and

   3.4. provide recommendations for action having regard to the assessment.

Compliance Policy

4. Spring Gully will, issue a policy statement outlining Spring Gully's commitment to trade practices compliance (**the Compliance Policy**). Spring Gully will ensure the Compliance Policy:

   4.1. is written in plain language;

   4.2. contains a statement of commitment to compliance with the *Competition and Consumer Act 2010*;

   4.3. contains a requirement for all staff to report any Compliance Program related issues and trade practices compliance concerns to the Compliance Officer; and

   4.4. contains a clear statement that Spring Gully will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the *Competition and Consumer Act* and will not indemnify them.

Complaints Handling System

5. Spring Gully will ensure the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external trade practices complaints.

Training

6. Spring Gully will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical training for all employees of Spring Gully, whose duties could result in them being concerned with conduct that may contravene sections 18, 29(a) and 33 of the ACL. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to sections 18, 29(a) and 33 of the ACL. Spring Gully must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.

7. Spring Gully will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees whose duties could result in them being concerned with conduct that may contravene sections 18, 29(a) and 33 of the ACL.

Reports to Senior Management

8. Spring Gully will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 12 months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the ACCC

9. Spring Gully shall, at its own expense, within 6 months of the date of this Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program. Spring Gully will implement promptly and with due diligence any recommendations the ACCC may make that are reasonably necessary to ensure that Spring Gully maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Spring Gully shall, at its own expense, cause annual reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:

    10.1. **Scope of the Review** – the Reviews should be broad and rigorous enough to provide Spring Gully and the ACCC with supportable verification that the Spring Gully has in place a program that complies with each of the requirements detailed in paragraphs 1-9 above and to provide the Review reports and opinions detailed at point 12 below.

    10.2. **Independence of Reviewer** – Spring Gully shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

        10.2.1. did not design or implement the Compliance Program;

        10.2.2. is not a present or past staff member or director of Spring Gully;

        10.2.3. has not acted and does not act for Spring Gully in any trade practices related matters;

        10.2.4. has not and does not act for or consult to Spring Gully or provide other services on trade practices related matters other than Compliance Program reviewing; and

10.2.5. has no significant shareholding or other interests in Spring Gully.

10.3. **Evidence** – Spring Gully shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Spring Gully's possession or control, including without limitation:

10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Spring Gully;

10.3.2. Spring Gully's records, including the company's complaints register/reports and any documents relevant to Spring Gully's training or induction program; and

10.3.3. documents created by Spring Gully's consultants and legal practitioners for use in Spring Gully's Compliance Program.

10.4. Spring Gully shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

11. Spring Gully shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

Company Compliance Program Review Report (to be provided to Spring Gully)

11.1. Spring Gully's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program including:

11.1.1. if, and to what extent, the Compliance Program of Spring Gully includes all the elements detailed in paragraphs 1-10 above;

11.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;

11.1.3. if, and to what extent, the trade practices training is effective;

11.1.4. if, and to what extent, Spring Gully's complaints handling system is effective;

11.1.5. recommendations for rectifying deficiencies in 11.1.1 – 11.1.4. that the Reviewer thinks are reasonably necessary to ensure that Spring Gully maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

ACCC Compliance Program Review Report (to be provided to the ACCC)

11.2. The ACCC Compliance Program Review Report will supply particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

11.2.1. details of the evidence gathered and examined during the Review;

11.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;

11.2.3. the Reviewer's opinion on whether Spring Gully has in place an effective Compliance Program that complies with the requirements detailed in paragraph 1 – 10 above;

11.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Spring Gully's Compliance Program;

11.2.5. confirmation that any actual and potential inadequacies in Spring Gully's Compliance Program have been brought to the attention of the Compliance Officer and the governing body;

11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Spring Gully's Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by Spring Gully;

11.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and

11.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

11.3. Spring Gully will ensure that the Review Reports are completed and provided to Spring Gully within two months of each Review.

11.4. Spring Gully will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.

12. **Recommendations** – Spring Gully shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC, that are reasonably necessary to ensure that Spring Gully maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

13. Spring Gully shall, at its own expense, if requested by the ACCC, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.

14. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Spring Gully shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the ACCC.