

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

13 – 14 February 2013

Question: AET 114-117

Topic: ACL Country of Origin Labelling

Written: Received from Committee – 22 February 2013

Senator RYAN asked:

114. What penalties or other sanctions have been imposed on businesses in breach of the country of origin representations in the ACL?
115. How many complaints has the ACCC received about confusion surrounding the requirements and meanings of the country of origin representations set out in s 255 of the Australian Consumer Law?
116. In the event of a complaint about a misleading or deceptive claim on food labelling:
 - a. how quickly does the ACCC respond to it and
 - b. enforce a removal of the claim?
117. What are the statistics on this for the years since 2008 until now?

Answer:

114. The ACCC has achieved the following relevant enforcement outcomes since the commencement of the Australian Consumer Law (ACL) on 1 January 2011.
 - In October 2012, the Federal Court ordered Gold Coast retailer UNJ Millenium Pty Ltd to pay \$55 000 in penalties admitting it made false or misleading claims that sheepskin and wool bedding products were made in Australia, contained 100% sheep wool or contained 100% alpaca wool.
 - In February 2013, the Federal Court imposed a penalty of \$50 000 on a Victorian butcher, Kingisland Meatworks & Cellars Pty Ltd for misleading place of origin representations. This followed the court's finding in August 2012 that Kingisland Meatworks had falsely represented the meat offered for sale through its Brighton shop was from King Island, when in fact very little or none of the meat was from King Island.
 - In February 2013, the Federal Court made declarations and imposed a \$50 000 penalty on Hooker Meats Pty Ltd trading as Peninsula Bulk Meats for misleading and deceptive conduct in representing the meat it offered for sale was sourced from King Island. Hooker Meats also provided the court with an undertaking not to represent that its product originated from cattle that were raised on King Island in circumstances where the product does not, in fact, originate from cattle raised on King Island.
 - In 2012, Club Trading & Distribution, the distributor of 'Double D' eucalyptus oil, paid a \$6 600 infringement notice for falsely labelling imported oil as made in Australia.

This information relates to enforcement action undertaken by the ACCC and does not reflect all enforcement activities being undertaken by ACL regulators in relation to country of origin

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issues. The ACL is administered and enforced jointly by the ACCC and the State and Territory consumer protection agencies, with the involvement of ASIC on relevant matters.

In addition to the enforcement actions outlined above, the ACCC had a long history of successful enforcement in relation to misleading claims about country or place of origin prior to the commencement of the ACL and pecuniary penalties. Examples of relevant enforcement action include:

- In 2011, the ACCC accepted court enforceable undertakings from Aldi Foods Pty Ltd and Spring Gully Foods Pty Ltd, in relation to misleading claims about the place of origin of Aldi's 'Just Organic' honey as being 'produced' or 'made with honey produced' on Kangaroo Island when in fact it contained less than 11 per cent Kangaroo Island honey.
- In 2011, the Federal Court imposed a \$430 000 penalty on online trader Marksun Australia for engaging in false and misleading conduct. Marksun Australia represented on various websites that its ugg boots were made in Australia when the ugg boots were in fact made in China.
- In 2010, the ACCC accepted court enforceable undertakings from H.J. Heinz Australia Company Limited in relation to Golden Circle products labelled as "proudly Australian owned". Heinz was owned by an American company, and acquired Golden Circle in 2008.
- In 2010, the ACCC accepted court enforceable undertakings from Austar Port Lincoln Pty Ltd trading as Austar Seafood Warehouse in relation to misleading claims made about the place of origin of some of its seafood. Austar had labelled its product as "local" and "100% Port Lincoln" when some were in fact sourced from elsewhere within Australia or imported.
- In 2009, the Federal Court declared that Harvey Fresh (1994) Limited misled consumers by falsely representing that two of its cheese products were produced in Western Australia, when in fact the cheese products were produced in Victoria.
- In 2007, the ACCC accepted court enforceable undertakings from Bevco Pty Ltd in relation to misleading labelling of Bevco pineapple juice. The juice was labelled "100% Australian made and owned", when the product contained reconstituted imported pineapple juice.
- In 2005, the Federal Court made consent orders against a Japanese company, Ixon Japan KK and its Australian affiliate, Ikuson Trading Company Pty Ltd, for misleading country of origin labelling of a honey drink they promoted. The companies promoted the 'Ixon Club Propolis Drink' to Japanese Ixon Club members as a 'Product of Australia', when the product was manufactured and bottled in China, from mostly Chinese honey. The drink only contained about 2 per cent Australian honey.
- In 2004, the Federal Court made consent orders against Berri Ltd for alleged misleading conduct in relation to the labelling of a number of its fruit juice and fruit drink products. The orders were made without a finding of liability and included an order restraining Berri Ltd from making representations that its fruit juice products containing reconstituted fruit juice were made 'from Australian and imported reconstituted fruit juice depending on seasonal availability'.
- In 2004, the ACCC accepted court enforceable undertakings from Cadbury Schweppes Pty Ltd about the labelling of The Natural Confectionery Company range of confectionery products. Cadbury Schweppes, which is part of the worldwide Cadbury Schweppes group of companies, acquired Sunrise Confectioners (Aust) Pty Ltd in April 2003. Sunrise distributed TNCC products in packaging that stated 'The company has been in the same family for four

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generations and is 100% Australian owned.’ Due to Cadbury Schweppes’s acquisition of Sunrise, this claim was not true.

- In 2003, the Federal Court found that The South Australian Olive Corporation Pty Ltd and Inglewood Olive Processors Limited engaged in misleading and deceptive conduct about representations made about Viva Extra Virgin Olive Oils in television and magazine advertising and on product labels. The advertisements and product labelling contained claims that Viva Extra Virgin Olive Oils were products of Australia, made in Australia; and were comprised entirely of olive oil from Australia, when in fact the oils were a blend that included up to 50 per cent imported oil.
 - In 2001, the ACCC accepted court enforceable undertakings from Entee Foods and Beverage Distributors and Wholesalers Pty Ltd. Entee Foods sold orange juice containing 15 per cent Brazilian orange juice concentrate under labels claiming the juice was a “product of Australia”, “Australian Squeezed” and “Darwin Squeezed”. The labelling on the “Darwin Squeezed” juice also failed to list sugar as an ingredient in the juice.
115. During 2012, the ACCC received 85 contacts, 62 from traders and 23 from consumers seeking clarification in relation to requirements relating to country of origin provisions of the ACL.
116. – 117.

The ACCC cannot pursue all the complaints it receives about the conduct of traders or businesses and the ACCC is unlikely to become involved in resolving individual consumer or small business disputes. While all complaints are carefully considered, the ACCC’s role is to focus on those circumstances that harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for competition and consumers. The ACCC’s Compliance and Enforcement Policy is available online at <http://www.accc.gov.au/content/index.phtml/itemId/867964>.

Examples of ACCC enforcement action relating to food labelling since 2008 include the following:

- In December 2012, the Federal Court found that Pepe’s Ducks Ltd had engaged in false or misleading conduct by using the words ‘Open Range’ and ‘Grown Nature’s Way’ (in conjunction with a pictorial image of a duck in the outdoors against a background of a lake) on its packaging, delivery vehicles, website, signage, stationery and/or merchandise. The Court ordered by consent a penalty of \$375 000, injunctions, corrective advertising, implementation of a compliance program and costs.
- In September 2012, the Federal Court found that Ms Rosemary Bruhn had falsely represented that eggs supplied to business customers were free range when a substantial proportion were cage eggs. The Court ordered by consent a penalty of \$50 000, injunctions, corrective advertising and costs.
- In 2010, the ACCC accepted court enforceable undertakings from National Foods Ltd in relation to the packaging of Berry Australian Fresh products which suggested to consumers that it only contained recently squeezed juice when in fact the products within this range may contain a blend of fresh juice and aseptically stored juice.

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- In 2010, the ACCC accepted court enforceable undertakings from the Australian Health and Nutrition Association Limited, trading as Sanitarium, concerning misleading representations made on the packaging of some cereal products.
- In 2009, the ACCC accepted court enforceable undertakings from Basfoods (Aust) Pty in relation to representations that an edible oil product was extra virgin olive oil.
- In 2009, the ACCC accepted court enforceable undertakings from Calcorp (Australia) Pty Ltd in relation to representations that edible oil product was extra virgin olive oil.
- In 2008, the Federal Court made orders by consent against Australian Co-operative Foods Ltd in relation to misrepresentations about the style of certain cheeses.
- In 2008, the ACCC accepted court enforceable undertakings from Natur-All Pty Ltd (trading as Go Natural) in relation to packaging representations that may have implied that the products were unprocessed berry and/or apricot pieces coated in yoghurt, when in fact the product was made from a fruit-based mixture consisting predominantly of fruit concentrate, sugar and semolina coated in yoghurt.
- In 2008, the ACCC accepted court enforceable undertakings from Harvey Fresh (1994) Ltd in relation to representations a fruit juice product contained 100 per cent juice, when the product did not contain 100 per cent juice.
- In 2008, the ACCC accepted court enforceable undertakings from Austrimi Seafoods Ltd in relation to the labelling of a Kalamari' product which gave an impression the product was made predominately of calamari or squid whereas the ingredients list stated it contained only 4 per cent squid.