



## Country of origin legislation and the market for orange juice: Are consumers being squeezed?

*Elizabeth Payne and David K Round\**

*The country of origin information provided to consumers on product labels in Australia has frequently been found by the courts to be unsatisfactory. This highlights the inherent difficulties in conveying to consumers the meaning of various 'made in' or 'product of' representations as specified in the TPA, as well as the difficulties encountered by producers when package sizes are not large, and when their inputs are seasonal in nature. The labelling of orange juice reflects this situation well. Country of origin is a significant product attribute that consumers consider, in addition to other attributes such as taste, price, additives, brand and packaging, when formulating their orange juice purchasing decisions. Several producers of orange juice have been found in breach of the TPA in recent years for making misleading statements on their labels as to the country of origin of their juice. As part of a wider study that investigated the level of support from Australian consumers for Australian-made orange juice, we examined the level of understanding by consumers for origin labelling terms such as 'Made in Australia' and 'Product of Australia'. We found that consumers generally seek to purchase Australian-made orange juice, although price and taste also significantly influence their decision-making. Consumers displayed a high awareness of the existence of origin labelling terms, but generally were confused about the meanings and requirements of these terms.*

### Introduction

The marketing literature has shown that consumers are more inclined to evaluate their own country's products more favourably than foreign products. Australia is not exempt from this phenomenon, and researchers have found a general home country selection bias for 'Australian Made' goods. For domestic producers the use of a 'Made in Australia' claim on a product can provide marketing advantages over other products. Marketing campaigns to buy products that are 'Made in Australia' or 'Product of Australia' are common.<sup>1</sup>

Our study breaks new research ground by focusing on the country of origin (COO) preferences of Australian consumers of orange juice, a non-durable,

---

\* Elizabeth Payne is Policy Officer, Department of Industry, Tourism and Resources, Canberra, and David Round is Professor of Economics and Director, Centre for Regulation and Market Analysis, University of South Australia. We would like to thank Leanne Hanna, Peter Rossini, Rick Sarre, Rhonda Smith and Jeremy Tustin, all of whom provided valuable input and comment at different stages of this research. However, the analyses and opinions expressed in this comment should be ascribed to the authors alone, and not to anyone else, nor to any of the organisations with which the authors are associated.

<sup>1</sup> C Amonini, J Keogh and J Sweeney, 'The dual nature of Country of Origin Effects — a study of Australian consumers' evaluations' (1998) 6(2) *Australasian Marketing Jnl* 13–27 and P Quester, N Marr and P Yeoh, 'Country-of-origin effects: an Australian experiment in

frequently purchased product.<sup>2</sup> In recent years the increased availability of imported reconstituted orange juice has triggered an enhanced range of blended domestic and imported orange juices available at supermarkets. This has led to potential confusion for consumers as to where the juice in various brands really comes from, leading to considerable intervention by the Australian Competition and Consumer Commission (ACCC).

In this comment we investigate whether consumers prefer orange juice that is made in Australia (colloquially speaking) compared to imported brands; how they rank country of origin to other product features such as price, quality and branding; and the extent of consumer awareness of 'Made in Australia' and 'Product of Australia' labelling on orange juice, as well as whether consumers understand this COO terminology. We first briefly review the relevant literature, and outline the Australian COO legislation, in particular s 53(eb) of the Trade Practices Act 1974 (Cth) (TPA). Next we examine a number of cases where orange juice manufacturers have been investigated by the ACCC for making false COO representations on their labels. After a discussion of our research methodology and the characteristics of the consumer sample that was taken at supermarkets around the Adelaide metropolitan area, we report our results. Finally we summarise our findings, and offer some policy and practical recommendations based on them.

## Country of origin effects

### Definition of country of origin effects

One of the first researchers to conceptualise the COO phenomenon was Nagashima,<sup>3</sup> who defined the image that consumers associate with a given country of origin as 'the picture, the reputation, the stereotype that businessmen and consumers attach to products of a specific country. This image is created by such variables as representative products, national characteristics, economic and political background, history and traditions.' The COO effect has been defined by Samiee<sup>4</sup> as any influence, positive or negative, that the country of manufacture might have on the consumer's choice processes or subsequent behaviour. In line with Samiee's definition, Gurhan-Canli and Maheswaran<sup>5</sup> argue that COO effects refer to the extent to which the place of manufacture influences product evaluations.

---

shelf labelling' (1996) 6(1) *The International Review of Retail, Distribution and Consumer Research* 113–33 have been pioneers in documenting the country of origin effect in Australia.

2 The COO literature has related predominantly to durable, higher involvement (which require a greater number of complex stages to obtain the finished product), and infrequently purchased products such as cars, computers and televisions. While COO research has been extensive, its focus has largely been on the attitudes of consumers from the United States, Japan and large European and Asian countries.

3 A Nagashima, 'A comparison of Japanese and US attitudes towards foreign products' (1970) 34 *Jnl of Marketing* 68 at 68.

4 S Samiee, 'Customer evaluations of products in a global market' (1994) 25(3) *Jnl of International Business Studies* 579–604.

5 Z Gurhan-Canli and D Maheswaran, 'Determinants of Country of Origin Evaluations' (2000) 27 *Jnl of Consumer Research* 96–108.

### 'Buy Australian' and 'Made in Australia' campaigns

The 'Buy Australian' (also known as 'Made in Australia') campaign started in 1923 when the Australian Natives Association initiated 'Made in Australia' week. In 1961 the slogan 'Buy Australian and your money comes back to you' was used to remind consumers of their responsibility to support Australians by buying Australian products.<sup>6</sup> The Advance Australia Foundation, a non-political, non-profit public interest company established in 1979 to regulate campaigns encouraging the purchase of Australian-made goods, launched an 'Australian Made' campaign in 1986 in an effort to protect domestic companies from imports.<sup>7</sup> It was relaunched in July 1999 with the support of the Australian Chamber of Commerce and Industry, and the Commonwealth Department of Industry, Science and Resources, after the Advance Australia Foundation went into voluntary liquidation.<sup>8</sup> The Australian-made logo certification trademark (owned by the Commonwealth Government and protected under the Trademarks Act) was launched in the 'Australian Made' campaign to promote Australian-made goods in local and export markets.

Many observers, both academic and others, have considered the effectiveness of the 'Australian Made' campaign. Some have been enthusiastic;<sup>9</sup> some sceptical;<sup>10</sup> and others critical.<sup>11</sup> In May 1999 the Commonwealth Department of Industry, Science and Resources commissioned a survey of consumers which highlighted the importance that they attach to the 'Made in Australia' label. It found that almost 70% of consumers looked for information on a product's origin when making a purchase, and that consumers look for COO labels to help them to determine the quality of the product, and to support local industry and employment.<sup>12</sup>

Research by the Advance Australia Foundation<sup>13</sup> has shown that the main reasons people buy Australian-made products are to create jobs, help the economy, support fellow Australians, prepare for the future of their children and their country, reduce imports, and help local manufacturers. This study also found that 83% of consumers believe COO information is important when purchasing fresh food, and that 72% believe that this information is important when deciding which packaged foods to buy. It showed that awareness of the importance of buying Australian-made goods and the frequency of seeking Australian-made products was higher amongst older respondents (50+ years) than younger respondents (18–34 years), but that

6 Quester et al, above n 1.

7 W Fischer and P Byron, 'Buy Australian Made' (1997) 20 *Jnl of Consumer Policy* 89–97.

8 M J Baker and L Ballington, 'Country of origin as a source of competitive advantage' (2002) 10 *Jnl of Strategic Marketing* 157–68.

9 Ibid; N Shoebridge, 'Slow start for "Buy Australian" scheme' (1998) 20(25) *Business Review Weekly* 74–5.

10 Fischer and Byron, above n 7; G Lennie, 'So, you want to buy Australian?', *The Age*, 14 November 1986, p 13.

11 T Black, 'Should we really buy Australian?' (1995) 65(1) *Australian Accountant* 14–21;

T Black, 'Buy Australian?' (1995) 65(5) *Australian Accountant* 9; R Langford, "'Australian Made" fades to grey, and licensees are angry' (1997) 19(31) *Business Review Weekly* 62–3.

12 Baker and Ballington, above n 8.

13 Advance Australia Foundation, 1997, 'Australian Made', <<http://www.typtamer.com.au/resource/news9/aussie.htm>> (accessed 3 October 2004).

55% of the respondents actively sought to buy products of Australian origin most of the time.

### Consumer understanding of country of origin labels

The question of whether a home country bias exists among consumers is one of the most well-researched areas in the COO literature. The evidence is that product evaluation of goods is significantly influenced by the origin of a good.<sup>14</sup> Researchers have discovered the existence of 'ethnocentric' consumers who consistently prefer products from their home country to those from abroad, and that consumer ethnocentrism has a significant influence on consumer evaluations of goods and services, especially when products are identical in all other respects.

While there have been a number of studies on the effectiveness of the 'Buy Australian' campaign, researchers have failed to provide a comprehensive analysis of consumers' understanding of COO labels. It is important to ascertain the level of consumer understanding of the meaning of origin labels because 'Made in' and 'Product of' labels each reflect different demands upon Australian producers.

One of the few studies in this area was conducted by the Australian Consumers' Association<sup>15</sup> in its survey of 400 grocery shoppers that was designed to ascertain consumers' perceptions of the labels 'Made in Australia', 'Australian Made' and 'Product of Australia'. The results are summarised in Table 1. 'Product of Australia' was correctly perceived as the premium origin label, but there nevertheless was evidence of much confusion in consumers' minds.

---

14 C Reiersen, 'Are foreign products seen as national stereotypes?' (1966) 42 *Jnl of Retailing* 33–40; C Wang and C Lamb, 'The impact of selected environmental forces upon consumers' willingness to buy foreign products' (1983) 11(2) *Jnl of the Academy of Marketing Science* 71–84; C Lawrence, N Marr and C Prendergast, 'Country of origin stereotyping in the New Zealand motor vehicle industry' (1992) 4(1) *Asia Pacific International Jnl of Marketing* 37–51; H Lee, C Kim and J Miller, 'The relative effects of price, warranty and country of origin on consumer product evaluations' (1992) 6 *Jnl of Global Marketing* 55–80.

15 Australian Consumers' Association, 'Made in Australia — Does it mean what you think it means?', *Choice*, January 1993.

**Table 1: Consumer perceptions of the label  
'Made in Australia'**

<b>Made in Australia Means:</b>	<b>% who agree</b>
All ingredients made in Australia	36
Some ingredients made in Australia	62
Product processed in Australia	65
Product packaged in Australia	73
<b>Australian Made Means:</b>	<b>% who agree</b>
All ingredients made in Australia	49
Some ingredients made in Australia	56
Product processed in Australia	68
Product packaged in Australia	74
<b>Product of Australia Means:</b>	<b>% who agree</b>
All ingredients made in Australia	61
Some ingredients made in Australia	48
Product processed in Australia	71
Product packaged in Australia	73

Source: Australian Consumers Association, 1993, p 14.

Some legal researchers have argued that origin labels are misleading to consumers.<sup>16</sup> Pengilley has been strongly critical of the efficiency of 'Made in' representations and the inherent failure to provide consumers with a clear understanding of the term. Scacco and Givoni<sup>17</sup> have also highlighted the uncertainty amongst consumers about COO representations, and argue that the laws are misleading in that they allow consumers to believe that they are buying a wholly Australian product when in some situations they are receiving a product of which only 50% of the cost of manufacture might have occurred in Australia. This is particularly problematic in the packaged juice industries, where components are frequently sourced from overseas due to cost or seasonal availability pressures.

16 W Pengilley, 'The "country of origin" labelling amendments: the making of a teddy bear's picnic' (1999) 7(1) *CCLJ* 27-53; W Pengilley, 'If the ACCC's activities were "trade or commerce" would its country of origin guidelines constitute misleading or deceptive conduct under the Trade Practices Act?' (2000) 7(3) *CCLJ* 240-65; W Pengilley, 'What is happening about that ACCC misleading country of origin guideline?' (2000) 8(1) *CCLJ* 69-76; W Pengilley, 'Why won't the ACCC say outright that the 1998 Country of Origin defences are ineffective?' (2000) 8(2) *CCLJ* 193-6; R Steinwall, 'Country of origin labelling — the new law' (1998) 6(2) *CCLJ* 168-70.

17 E Scacco and S Givoni, 'Australian Made: Avoid the legal pitfalls' (2000) 50 *B and T Weekly* 69-71.

### Product categories evaluated in Australia

Research has shown that COO effects are product specific.<sup>18</sup> Roy Morgan Research<sup>19</sup> demonstrated the importance that consumers place on buying Australian products, and the varying levels of a COO effect that can occur depending on the product type. Some of their findings on consumer attitudes were:

- 83% believed COO information was important when purchasing fresh food;
- 72% believed COO information was important when purchasing packaged foods;
- 63% believed COO information was important when choosing clothing and shoes;
- 63% looked for COO information for white goods, and
- 57% thought COO information was important when looking at big ticket items like cars, motorbikes and boats.

Most of the studies measuring country of origin effects in Australia have focused on COO effects for consumer durables.<sup>20</sup> To our knowledge, no research has been carried out on COO effects for a perishable product like orange juice.

Acharya and Elliott<sup>21</sup> investigated the existence of consumer ethnocentrism and a home country bias in three product categories — tinned pineapple, jeans and cars. This research refuted the generalised home country bias, finding it to be product specific. Respondents perceived local pineapple to be of highest quality, whereas cars made in Japan and jeans made in the United States were perceived to be of the highest quality. Amonini et al investigated the level of a COO effect for a white shirt.<sup>22</sup> They found that country of manufacture had a dominant influence on purchasing decisions, and concluded that product quality perceptions generated by the brand name do not compensate for the effect on image when production is sourced from less-developed countries. In contrast, Fischer and Byron<sup>23</sup> showed that a 'Made in Australia' label on a business shirt had no positive influence on the Australian shirt's probability to be selected as the favoured shirt when compared to imported shirts. Implicit in the research undertaken by Quester et al was the notion that the COO effect

---

18 D Halfhill, 'Multinational marketing strategy: implications of attitudes towards country of origin' (1980) *Management International Review* 79–100; Quester et al, above n 1.

19 Roy Morgan Research, 'Consumer Awareness of Australian Made', Commissioned by the Australian Made Campaign, August and September 1999.

20 The focus overseas has been similar. See, eg, S Ahamed and A d'Astous, 'Comparison of country of origin effects on household and organisational buyers' product perceptions' (1995) 29(3) *European Jnl of Marketing* 35–51; P Chao, 'Partitioning Country-of-Origin Effects: consumer evaluations of a hybrid product' (1993) 24(2) *Jnl of International Business Studies* 291–306; R Ettenson, 'Brand name and country-of-origin effects in the emerging market economies of Russia, Poland and Hungary' (1993) 10(5) *International Marketing Review* 14–36 and C Han and V Terpstra, 'Country of origin effects for uni-national and bi-national products' (1988) 19 *Jnl of International Business Studies* 235–55.

21 C Acharya and G Elliott, 'Consumer ethnocentrism, perceived product quality and choice: an empirical investigation' (2003) 15(4) *Jnl of International Consumer Marketing* 87–115.

22 Amonini et al, above n 1.

23 Above n 7.

that exists for durable products may not be applicable to other products, where COO effects might be less significant. They compared the sales of canned cat food and canned tuna with Australian-made labels to brands without Australian-made labels, and found no significant difference, suggesting that the 'patriotic positioning strategy followed by many Australian marketers and retailers is somewhat misguided'.<sup>24</sup>

## Country of origin legislation

### The law

For domestic producers, the use of a 'Made in Australia' or 'Product of Australia' claim on a product can provide certain marketing advantages, given consumer ethnocentricity. There will be a tendency for companies to push the boundaries of such representations to capitalise on the marketing opportunities that they present. For these reasons COO representations in Australia are governed by the TPA and enforced by the ACCC. Note, however, that the TPA is not prescriptive about stating where goods come from — it is not mandatory for the source of a product to be stated,<sup>25</sup> but if a COO statement of any type is made, then it must be accurate.

Section 52 of the TPA is a general prohibition against conduct that misleads or deceives, or is likely to do so. It states that: 'A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or which is likely to mislead or deceive.' Section 53(eb) of the TPA, introduced in 1986, provides a more specific prohibition of false or misleading representations concerning a product's country of origin:

A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods and services or in connection with the promotion by any means of the supply or use of goods or services:

(eb) make a false or misleading representation concerning the place of origin of goods.

As a result of differing interpretations made by the courts in cases since 1986, it became increasingly clear that further amendments were necessary in order to clarify the characteristics that goods *must* have to ensure that a claim about their COO does not constitute a breach of s 52 or s 53(eb). Under Div 1AA of Pt V of the TPA, introduced in the Trade Practices Amendment (Country of Origin Representations) Act 1998 in August 1998,<sup>26</sup> ss 65AA to 65AN set out specific defences or safe harbours to the ss 52 and 53(eb) prohibitions, with respect to COO statements.<sup>27</sup>

---

<sup>24</sup> Above n 1, p 113.

<sup>25</sup> Note, however, that other federal or State laws may require an accurate description of the origin of goods.

<sup>26</sup> For background to these amendments see 'Country of Origin Representations' in Australian Trade Practices Reporter, CCH Australia Limited, Sydney, paras 22-870–22-892.

<sup>27</sup> For a detailed consideration of COO issues with respect to food and beverage industries in Australia, see ACCC, 'Food and Beverage Industry: Country of Origin Guidelines to the Trade Practices Act', ACCC Publishing Unit, Canberra, 2005. Note that COO claims are a subset of the more specific place of origin claims which are the focus of s 53(eb), and that the Div 1AA defences relate only to the geographically broader COO claims.

The first safe harbour in s 65AB provides that manufacturers will be able to claim that their goods are 'Made in Australia', or 'Australian Made' or 'Manufactured in Australia' without contravention of ss 52 or 53(eb) if:

- The goods have been substantially transformed in Australia; and
- 50 per cent or more of the cost of producing or manufacturing the good is attributable to production processes in Australia.<sup>28</sup>

Section 65AE states that goods will be regarded as having been substantially transformed in Australia if they undergo:

a fundamental change . . . in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

Ultimately, of course, it is for the courts to interpret whether this requirement has been met.

The second safe harbour in s 65AC relates to the use of the term 'Product of Australia'.<sup>29</sup> This term is considered to be a premium claim and to possess higher importance than claims such as 'Made in Australia'. Consequently it imposes more stringent conditions as to when it may be used. Section 65AC stipulates that if a corporation makes a representation that goods are the product of a particular country, uses the words 'product of', 'produce of', 'produced in' or any other grammatical variation of the word produce, two criteria must be met:

- The country of the claim must be the country of origin of each significant ingredient or each significant component of the goods, and
- All, or virtually all, of the processes involved in the production or manufacture of the good must have taken place in that country.

Just what constitutes a 'significant ingredient' or 'significant component' or 'virtually all' is not necessarily correlated to the percentage that the ingredient or component comprises of the good in question. The words 'significant' and 'virtually all' are not defined in the Act. However, the Explanatory Memorandum<sup>30</sup> to the amending legislation gives the following example:

for an apple and cranberry juice to be able to carry a 'produce of Australia' label, both the apple and the cranberry juice would have to be sourced from Australia. This is despite the cranberry juice being, on average, about 5 % of the total volume of the product. If, however, a local source can be found for the apple juice and the cranberry juice then it would be legitimate to employ a 'product of Australia' label, even if, say, a preservative was added to the juice and the preservative was imported. This is because the preservative does not go to the nature of the good.

The following examples illustrate the type of situation where a company

---

28 The provisions provide guidance in how to calculate these costs. This is not the place to discuss the difficulties inherent in such calculations. See ACCC, 'Food and Beverage Industry: Country of Origin Guidelines to the Trade Practices Act', ACCC Publishing Unit, Canberra, 2005 for some elaboration on the calculations that are necessary.

29 The wording is general in these provisions and applies to representations made about any country of origin.

30 Parliament of the Commonwealth of Australia, House of Representatives, 'Trade Practices Amendment (Country of origin representations) Bill, 1998', *Explanatory Memorandum*, Commonwealth of Australia, 2004, at <<http://scale.law.gov.au/html/ems/0/1998/0/0644519738.htm>> (accessed 3 October 2005).

has been found by the ACCC to have not met the standards required for the claim that it was a 'Product of Australia':

- In 1999, National Foods Ltd was found to be supplying consumers with yogurt labelled 'Product of Australia' that contained imported strawberry ingredients. The ACCC believed that a consumer buying strawberry yoghurt would be misled by the label 'Product of Australia', as the fruit used to flavour the product was not produced in Australia. Following a decision by the ACCC that strawberries were a significant ingredient, National Foods voluntarily changed its labels.<sup>31</sup>
- In 2000, YBD Pty Ltd labelled its muesli bars 'product of Australia, made from local and imported ingredients'. The imported ingredients were apricots, sultanas and coconut. The ACCC believed that these ingredients were 'defining' ingredients of the product and that consumers were being misled by the representation, as the fruit used to describe the flavour of the product was not produced in Australia. YBD Pty Ltd agreed to voluntarily change the wording to an acceptable 'Australian Made, Australian Owned'.<sup>32</sup>

Companies are clearly at risk of action by the ACCC, or another person who wishes to commence private legal action, if they do not maintain true representations on their labels concerning the amount of imported ingredients in their products.

### Some important country of origin cases under ss 52 and 53(eb)

The aim of s 53(eb) is to ensure that consumers are not misinformed about the COO of the goods that they purchase. After the section was passed, the courts struggled to provide any certainty about how COO claims could be made, thereby causing problems for manufacturers and consumers alike. Nevertheless, numerous companies, from air conditioner manufacturers and tuna processors, to stuffed toys and adhesive tape producers, have been found to have engaged in misleading and deceptive COO labelling, thereby contravening the section.

A brief examination of some of the leading cases decided under ss 52 and 53(eb) from 1986 to 1998 illustrates the difficulties inherent in adjudicating COO claims.

As it becomes more integrated into the global economy, Australia is becoming increasingly reliant on imported components for many products. This has meant that it has become difficult to establish the place of origin of a product where a number of different places have been involved in its manufacture. Gummow J observed in *Netcomm (Aust) Pty Ltd v Dataplex Pty Ltd* that:

---

31 ACCC, National Foods Ltd Country of Origin Claims, 1999, at <<http://www.accc.gov.au/content/index.phtml/itemId/322922>> (accessed 25 September 2005).

32 ACCC, 'New labels to correct Country of Origin claims', 2000, at <<http://www.accc.gov.au/content/index.phtml/itemId/323120>> (accessed 25 September 2005).

The concept of 'place of origin' will present difficulties where sophisticated articles derive their value and character as articles of commerce by various circumstances involving design and manufacture. There is then more likely to be a complex of integers constituting the origin of those articles . . . To say of goods that they were made in Australia plainly is to make a statement concerning their place of origin. The making of goods involves the steps and procedures which proceeded and resulted in the formation or composition of the goods.<sup>33</sup>

It was found in this case that the manufacturer had misleadingly advertised its computer modem as having been made in Australia, whereas in fact key components of the circuit board were made overseas, with the units being assembled in Australia. It would, however, have been acceptable to have used a phrase like 'Australian built', so long as it was used in the proper context.

In *Thorp v C A Imports Pty Ltd*,<sup>34</sup> it was held that it was a breach of the TPA to claim that a product was made in Australia even if a substantial part of the cost involved in the manufacture occurred in Australia. There were three steps involved in the manufacture of the toy koalas in question; and while only the first of these (the cutting and sewing of the casings) took place in Korea, Sheppard J found that this 'was the step which transformed the material . . . into the essential shape and appearance of a koala bear'.<sup>35</sup>

In *Siddons Pty Ltd v Stanley Works Pty Ltd*,<sup>36</sup> Jenkinson J held similarly that a tool that was shaped in Taiwan but was finished in Australia was not made in Australia. He found that:

The words 'Made in Australia', in application to a tool such as a metal spanner, in my opinion mean in ordinary parlance that most of the processes by which a piece of metal is brought into the shape of the tool as sold have occurred in this country.<sup>37</sup>

He went on to conclude that none of these processes had in fact occurred in Australia. There had therefore been a breach of ss 52 and 53 (eb).

It was found by Davies J in *Trade Practices Commission v QDSV Holdings Pty Ltd (t/as Bush Friends Australia)*<sup>38</sup> that it was misleading to state that a toy koala was made in Australia when a significant part of the manufacturing had been carried out in China, even though he was of the opinion that the components had been transformed into a toy koala in Australia (at that stage there was an origin labelling amendment Bill before parliament that would have relied upon a substantial transformation test, but it was never enacted in that form).<sup>39</sup>

In *ACCC v Lovelock Luke Pty Ltd*,<sup>40</sup> the respondent's air conditioners were promoted as having been made in Australia, but the component compressors were in fact imported. Lockhart J held that it was essential to consider the

33 (1988) ATPR 40-883 at 49,568; 81 ALR 101.

34 (1990) ATPR 40-996; 16 IPR 511.

35 *Ibid.*, at 50,967. The respondent was found not to be in breach, however, as it successfully argued that it had relied upon statements about labelling provided by the Department of Trade.

36 (1990) ATPR 41-044; 18 IPR 630.

37 *Ibid.*, at ATPR 51,596.

38 (1995) ATPR 41-371 at 40,114; 128 ALR 551.

39 On appeal (*QDSV Holdings Pty Ltd (t/as Bush Friends Australia) v Trade Practices Commission* (1995) 59 FCR 301; 131 ALR 493; ATPR 41-432) this decision was upheld.

40 (1997) 79 FCR 63; ATPR 41-594.

nature of the product, as well as the understanding and expectations that consumers had of where the components of such a product might be sourced. He found that to apply the term 'Made in Australia' to a product, it was necessary to ask whether the product was substantially manufactured in Australia. As all of the essential components apart from the compressor were made in Australia, he found that the air conditioners had been substantially manufactured in Australia, and that it was unlikely that consumers would have understood the 'Made in Australia' claim to mean that the air conditioners were 'wholly made within Australia'.<sup>41</sup>

In *ACCC v Unilever Australia Ltd*,<sup>42</sup> Mansfield J found that tuna processed and canned in South Australia was not misleadingly described as 'Product of Port Lincoln Tuna Processors Pty Ltd, Sth Australia', even though the tuna was not all caught in South Australia, (around 50% of it was caught in international waters). Unilever successfully argued that its labels accurately represented that the product sold as John West tuna was in fact processed and canned in Port Lincoln, as its complex and extensive manufacturing process in that city transformed the raw tuna and other ingredients into a different food. The court found that the words 'product of' conveyed their ordinary meaning, and that it was necessary to consider whether the label was misleading as to origin from the perspective of the class of consumers to which the representation was directed. After referring to the cases listed above, Mansfield J cited with approval the above findings of Lockhart J and Gummow J and held that:

The cases tend to show that where any significant step in the manufacturing process from raw materials to the final product occurs overseas, it will not be appropriate to label the product as made in Australia.<sup>43</sup>

In this case, however, the raw ingredient was, along with other raw ingredients, 'processed or "manufactured" entirely within Australia'. The end result of the canning process was:

quite different in taste, texture, appearance and odour from the tuna as a raw ingredient . . . There is nothing to suggest that the place of origin of the tuna as a raw ingredient is, or is capable of being, of significance to the consumer in terms of its ultimate characteristics as canned . . . The use of the word 'made' does not inherently convey that the raw materials of a product, even a dominant raw ingredient, are of a specific provenance.<sup>44</sup>

### Orange juice country of origin matters considered by the ACCC

When Australian oranges are out of season, orange juice manufacturers face significant problems in accurately describing on their labels the origin of the components of their juice products. In recent years a number of Australian orange juice producers have been pursued by the ACCC for alleged false COO

---

41 Ibid, at FCR 67; ATPR 44,227.

42 (1998) ATPR 41-607.

43 Ibid, at 40,605.

44 Ibid, at 40,606.

representations on their labels.<sup>45</sup> None of the investigations has resulted in a fully argued court case, but several have resulted in court enforceable undertakings or in consent orders.

#### **AU Agency Pty Ltd Trading as Country Fresh**

In June 1996 Country Fresh supplied orange juice with labels stating that the juice was made in Australia from reconstituted juice, but tests revealed that imported as well as Australian orange juice concentrate was used. Country Fresh undertook to change the offending labels and not make claims that products were 'Made in Australia' unless the concentrate used was exclusively sourced in Australia. Country Fresh agreed to implement a corporate compliance program aimed at preventing similar problems in the future.

#### **Harvey Fresh Ltd**

During 1996 Harvey Fresh supplied orange juice under the 'Orchard Fresh' label containing the words 'Product of Australia' and 'Contains 100% Australian and Imported Orange Juice Concentrate'. The ACCC was of the opinion that Harvey Fresh had engaged in misleading and deceptive conduct and false representations in relation to this labelling, especially in light of statements by the company that its product contained no imported juice content. Harvey Fresh acknowledged that it may have infringed ss 52 and 53(eb) and provided undertakings that it would cease to use the current Orchard Fresh label on any future packaging; place an appropriately-sized corrective advertisement in the *West Australian* newspaper; and implement an in-house trade practices compliance program.

#### **Florida Foods Pty Ltd**

In May 1997 Florida Foods consented to injunctions in the Federal Court that restrained it from making misleading claims about two of its orange juice products. It had labelled them as 'Product of Australia' when in fact they had contained reconstituted imported orange juice concentrate. It agreed to place corrective advertisements in a major Sydney newspaper; to offer refunds to consumers who were misled by the labelling; and to implement a corporate compliance program.

#### **Golden Circle Ltd**

From 1995 to 1997, Golden Circle supplied certain orange fruit juice and drink products labelled as 'Australian Made', 'Australian Grown' and 'Made in Australia from quality local and imported ingredients subject to seasonal availability'. However, all these products contained significant amounts of imported orange juice concentrate, and, in the ACCC's opinion, the company should have foreseen the need to use imported concentrates over such a period, as seasonal shortfalls in the availability of Australian juice would have been predictable. The ACCC accepted court-enforceable undertakings from Golden Circle, who also agreed to review and amend its product labelling, where necessary; publish a corrective and explanatory notice to consumers Australia-wide; and implement a trade practices compliance program.

---

<sup>45</sup> For further information regarding these cases, see <[www.accc.gov.au](http://www.accc.gov.au)>.

### **Pauls Victoria Ltd**

The ACCC took court action after it discovered that Pauls Victoria Ltd was supplying Coles supermarkets with its house brand 'Savings' orange, and orange and mango, two-litre fruit drinks labelled 'Product of Australia', when they in fact contained imported juice. A shortage of Australian juice in February 1999 had resulted in mainly imported juice being used in the products. The incorrect labelling (which continued until May 2001) was found to be an error as Pauls had, at the relevant time, correctly changed the labelling for its own branded juice products. Pauls cooperated in bringing the court proceedings to a speedy end (injunctions were granted against it) and gave a special one-week discount of 25 cents on Savings brand fruit drinks bought in Victoria. It also agreed to set up a corporate compliance program aimed at preventing similar problems in the future.

### **Entee Food & Beverage Wholesalers & Distributors Pty Ltd**

Entee manufactured fruit juice in the Northern Territory. It was found by the ACCC to have supplied for sale orange juice bearing labels 'Darwin Squeezed', 'Australian Squeezed', 'Locally squeezed', 'product of Australia', and 'pure Australian fruit'. The Federal Court held that Entee breached s 53(eb) of the TPA by making false claims on the labels because, from January 2001 to June 2001, its products contained 15% orange juice reconstituted from imported Brazilian orange juice concentrate, and were also packaged using orange juice prepared in Brisbane. No Entee juice had been squeezed in Darwin since around June 2000. Entee admitted to breaching the Act, and consented to court orders that it stop making the misleading claims; sign on to a fruit juice industry code of practice; and to pay \$5000 towards the ACCC's court costs. Entee also provided the ACCC with a court-enforceable undertaking to ensure that all management and relevant staff participated in trade practices compliance training.

### **Berri Ltd**

Between March 1999 and June 2000 Berri supplied Coles supermarkets with Farmland brand orange juice concentrate that was labelled 'Made in Australia from Australian Fruit Juice'. The labelling on this product was changed in around June 2000 to read 'Made from a blend of quality Australian and imported fruit juices depending on seasonal availability'. It was alleged by the ACCC that this and similar labelling, which had also appeared at various times on apple and other juice varieties sold under the Farmland, Just Juice and Sunburst brands, was misleading because Berri had failed to use, so far as available, a majority of Australian produce in these products. The ACCC sought declarations from the Federal Court that the labelling was misleading. On 30 April 2004, the court made orders by consent including an injunction,<sup>46</sup> an order that Berri engage an independent consultant with trade practices expertise to ensure its labels complied with the COO obligations contained in the TPA, and an order for costs of \$100,000 against Berri Ltd.

---

<sup>46</sup> The injunction restrained Berri for three years from making representations, in certain instances, that in relation to its fruit juice products containing reconstituted fruit juice, those products were made from Australian and imported reconstituted fruit juice depending on seasonal availability.

## Research design and methodology

### The sample of consumers and the questionnaire

Our survey aimed to investigate consumer decision-making and the role of COO and other product attributes such as taste, additives, price, packaging and brand in the purchase of orange juice. It also sought to discover consumers' understanding of the terms 'Made in Australia' and 'Product of Australia'.

Face-to-face surveys are considered a very effective method of data collection, particularly when researchers are 'interested in understanding the perceptions of participants or learning how participants come to attach certain meanings to phenomena or events'.<sup>47</sup> They have a high response rate, are flexible, and the interviewer controls the sequence of questions and knows when all of the questions have been fully answered.<sup>48</sup> They have been a popular method of data collection among COO researchers of the 'Buy Australian' campaign and attitudes towards Australian made products.<sup>49</sup>

Although offering many advantages, the use of questionnaires in market research may encounter factors that have a negative impact on measurement reliability and validity. One of these is a 'social desirability bias' in subjects' responses. Social desirability can be defined as the need for social approval, or acceptance, and the belief that this approval or acceptance can be achieved through culturally acceptable behaviours,<sup>50</sup> and so respondents have the tendency to admit to socially acceptable characteristics.<sup>51</sup> We followed the standard procedure to overcome this bias by using questions that were projective (indirect) rather than personal (direct).

A two-stage cluster sampling technique was employed,<sup>52</sup> whereby a simple random sample of clusters (10 supermarkets) was first selected, and then a simple random sample of elements (respondents) was selected from each supermarket.<sup>53</sup> The population for this study was Adelaide shoppers aged

47 B Berg, *Qualitative Research Methods for the Social Sciences*, 2nd ed, Allyn and Bacon, Boston, 1995, p 35.

48 L Neuman, *Social Research Methods — Quantitative and Qualitative Approaches*, 5th ed, Pearson Education Inc, USA, 2003.

49 Fischer and Byron, above n 7; Amonini et al, above n 1.

50 D Marlowe and D Crowne, 'Social desirability and response to perceived situational demand' (1964) 25 *Jnl of Consulting Psychology* 485–506; R J Fisher, 'Social desirability bias and the validity of indirect questioning' (1993) 20 *Jnl of Consumer Market Research* 303–15; B Keillor, D Owens and C Pettijohn, 'A cross-cultural/cross-national study of influencing factors and socially desirable response biases' (2001) 43(1) *International Jnl of Market Research* 63–84.

51 J Chung and G S Monroe, 'Exploring social desirability bias' (2003) 44 *Jnl of Business Ethics* 291–302.

52 R Scheaffer, W Mendenhall and L Ott, *Elementary Survey Sampling*, 2nd ed, Duxbury Press, North Scituate, MA, 1979, argue that a two-stage cluster sampling technique has two primary benefits. It increases the convenience of researchers in collecting data by saving time, and it also allows them to sample clusters of elements that are physically close together, lowering the cost of obtaining data which can be inflated by travel costs if the sampled elements are spread over a large geographic area.

53 Samiee, above n 4, has observed that a shortcoming of past COO research was that it relied on non-representative, non-random samples, often using student subjects. Our research avoids this problem through the use of random sampling.

18 years and over. The BiLo and Woolworths supermarket chains were selected to reflect known demographic and socioeconomic differences in shoppers. Ten suburban supermarket locations were sampled from the Adelaide metropolitan area.<sup>54</sup> Permission to conduct the survey was obtained from each store and the interviews were conducted in accordance with commercial market research procedures. Consumers were randomly approached in supermarkets and asked if they would participate in a study investigating consumer attitudes towards the 'Buy Australian' Campaign and Australian orange juice products. Only consumers who indicated that they frequently purchased orange juice were included in the sample. A sample size of 264 was obtained, which was greater than the sample size of 154 in a similar Australian study by Amonini et al.<sup>55</sup> The questionnaire asked respondents to rate six orange juice attributes, including country of origin, asked for comments on COO labelling, and also asked participants to outline their understanding of the terms 'Made in Australia' and 'Product of Australia'.<sup>56</sup>

### Consumer demographics

To test whether our sampling method resulted in a representative sample of Adelaide consumers, the age, gender, and language characteristics of those surveyed were compared to the Adelaide population data revealed in the 2001 ABS Census of Population and Housing. The ratio of males to females in our survey was 41:59, compared with the census ratio of 48:52. Such a gender disparity is not uncommon in consumer surveying of this sort.<sup>57</sup> We believe that our sample can be regarded as representative of the proportions of males/females visiting Adelaide supermarkets, as females are generally seen as the main executors of minor purchasing decisions, which is exactly the target group sought for our research. The average age of those surveyed was slightly above the average age of the 2001 Census population. Specifically, the 55–64 age group was over-represented and the 18–34 age group was under-represented, which no doubt reflects the fact that the survey was taken during weekday working hours. Otherwise, the survey produced a representative sample of the Adelaide population by age. In our sample 87% of respondents spoke English as a first language, while the 2001 Census showed that 84% of the population spoke only English at home. Our sample appears to be representative of the overall Adelaide population in this respect.

## Results

### Consumer preferences for Australian orange juice

A very high 96.2% of all respondents strongly agreed with the statement that 'people should choose Australian-made orange juice when price and quality

---

54 The suburbs were Blair Athol, Rostrevor, Magill, Aberfoyle Park, Oaklands Park, Brighton, Gilles Plains, Cumberland Park, Glenelg and Daw Park.

55 Above n 1.

56 The questionnaire was designed with the help of findings from a pilot survey, which was conducted with a convenience sample in the hope of uncovering questionnaire design issues that may not have been apparent to the researchers and to ensure that the terms used were comprehensible.

57 See, eg, Fischer and Byron, above n 7.

are as good as imported products'. This is similar to the findings of Cameron and Elliot,<sup>58</sup> where 93.3% of the participants believed that people should choose Australian-made products when the price and quality were as good as that of imported products. Respondents were also asked to respond to the statement 'Country of origin information is shown clearly on orange juice packaging', giving their answers in terms of a five point Likert scale.<sup>59</sup> The responses were somewhat polarised. While 46.9% of respondents felt that COO information was not shown clearly on the labels, 36.2% believed that it was. Given that there is only a relatively small amount of label space for orange juice manufacturers to display COO information, this result is not surprising. Producers should perhaps find a way to show COO information more clearly as consumers appear to prefer Australian orange juice, but our results suggest that many are hindered by a perceived lack of clarity on COO labels.

We examined the significance of any relationship between the three demographic characteristics recorded in the survey and the responses to these two statements. Chi-squared tests confirmed that there were no differences in the responses to the COO statement according to different gender, ages, or English speaking backgrounds. Age, however, did have significant effect on consumer perceptions about choosing Australian juice, with older consumers more likely to seek the Australian product so long as its price and quality were on a par with that of imported products. Consumers from non-English-speaking backgrounds were less likely to choose Australian orange juice if the product was more expensive than imports.

### Preferences towards orange juice attributes

We turn now to a consideration of how consumers rank and compare country of origin to other product features such as price, quality and brand. We asked consumers to rate 'Australian made' compared with five other orange juice characteristics — Taste, Additives, Price, Packaging and Brand.<sup>60</sup> They were asked to rank these attributes on a scale of 1 (most preferred attribute) to 6 (least preferred). The mean calculations indicated that Taste was the most desirable attribute, followed by Australian made, Price, Additives, and Brand, with Packaging being rated as being of very little importance. The results are shown in Table 2.

---

58 R Cameron and G Elliott, 'The country of origin effect and consumer attitudes to buy local campaigns: Australian Evidence' (1998) 6(2) *Australasian Marketing Jnl* 39–50.

59 The five possible responses that consumers could select in response to the statement were 'strongly disagree', 'moderately disagree', 'neither agree nor disagree', 'moderately agree', and 'strongly agree'.

60 This question was asked of consumers before the questionnaire went on to ask if they knew the difference between the two terms 'made in Australia' and 'product of Australia'. This can be explained by the fact that we wished to discover in general terms, or as a matter of principle, how consumers ranked COO compared with other product attributes, and we did not want to muddy the waters at this stage with rather more legal/technical definitional issues.

**Table 2: Descriptive statistics of preference rankings of orange juice attributes**

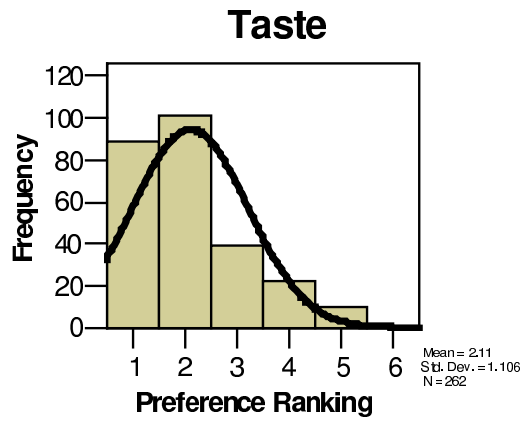
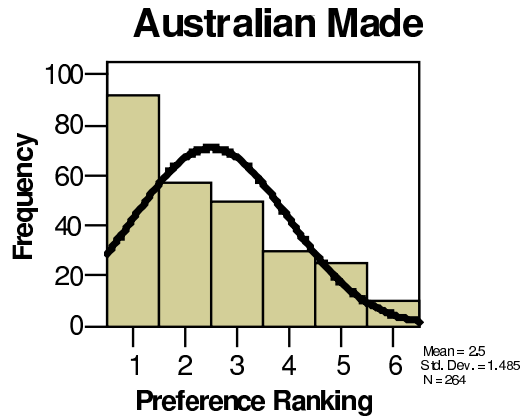
	Mean*	Standard Deviation
Taste	2.11	1.11
Australian Made	2.50	1.49
Price	2.96	1.38
Additives	3.89	1.50
Brand	4.17	1.39
Packaging	5.33	0.90

\*1=most preferred choice, 6=least preferred choice.

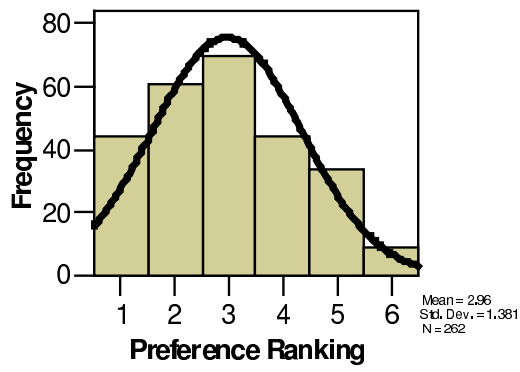
However, a simple analysis of means can conceal underlying variation in the responses. The frequency distributions of respondents' preferences are shown in Figures 1–6, and they illustrate that the Australian Made attribute received more first preference scores than any other attribute, although only narrowly so compared with Taste. However, the allocation of rankings for Australian Made was more spread across preferences than was the case for Taste, as can be seen in Figures 1 and 2, and by a comparison of the relevant standard deviations in Table 2. Only 56.4% of the respondents ranked Australian Made as either their first or second preference, suggesting that country of origin is less important to them than Taste, which was ranked by 72.4% of all respondents as either their first or second preference. Good taste appears to be a more important attribute than COO in influencing consumers' purchases of orange juice.

The mean calculations for Price and Additives suggested much the same as did their frequency distributions. Price was ranked most often at preference three and had the third highest mean of 2.96, and Additives was ranked most frequently at preference four and had the fourth highest mean of 3.89. The distribution plots show that Brand was not especially important to consumers, with 71% of the respondents ranking brand as either their fourth, fifth or six most important criterion. Nearly all respondents found Packaging to be virtually inconsequential when considering orange juice purchases, with 85.5% of them rating Packaging to be the least, or second to least, important buying consideration.

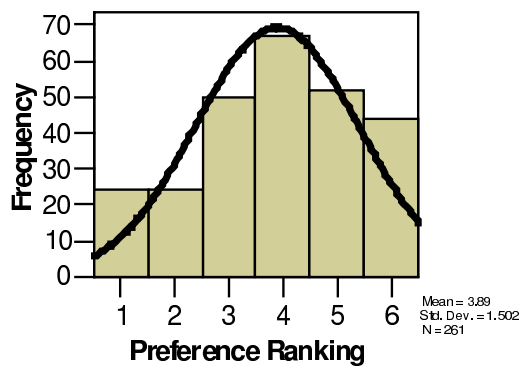
**Figure 1–Figure 6: Orange Juice Attributes:  
Preference Ranking**

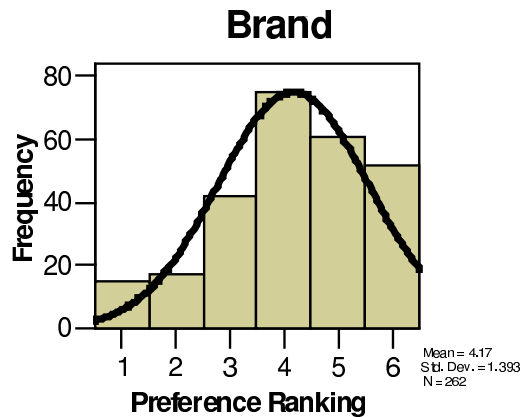
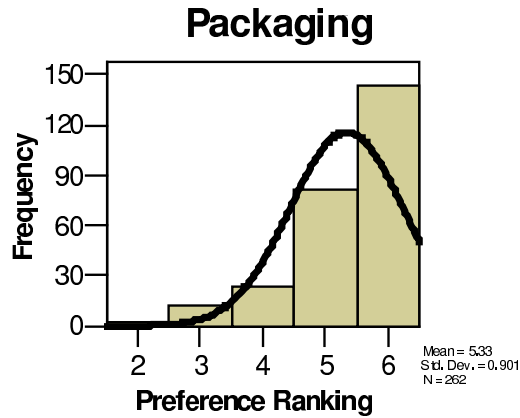


### Price



### Additives





### Consumer understanding of country of origin terms

Consumers were asked to indicate their familiarity with 'Made in Australia' and 'Product of Australia', the two predominant COO terms used in Australia. The results revealed that:

- 98.5% of respondents claimed to have heard of both terms;
- 0.8% of respondents claimed they had heard of 'Made in Australia' only;
- 0.8% of respondents claimed they had not heard of either term.

These responses are consistent with the aims of the 'Buy Australian' campaign in promoting Australian products, as most of the respondents were aware, or have at least heard of, COO labelling terms.

We then defined for respondents the two components that the TPA demands to be met for a 'Made in Australia' claim to be valid, and the two more

rigorous criteria that must be satisfied before a ‘Product of Australia’ claim can be made.<sup>61</sup> Given these definitions, we asked each respondent to check one of the following four responses to the question ‘Were you surprised by these definitions?’:

- I was not surprised. These definitions were similar to my own understanding.
- I was surprised because I thought ‘Made in Australia’ and ‘Product of Australia’ meant the same thing.
- I was surprised because I thought that ‘Made in Australia’ was the premium origin claim in Australia.
- I was surprised but for a different reason than those listed above.

While the very substantial majority of respondents claimed that they had heard of both COO labelling terms, only 27.2% agreed that their understanding of the terms coincided with the definitions provided to them. These findings were, however, more positive than those revealed by Roy Morgan Research,<sup>62</sup> where only 7% of respondents could accurately describe what ‘Made in Australia’ meant.

Table 3 shows that 9.2% of the respondents thought that ‘Made in Australia’ and ‘Product of Australia’ had the same meaning, and that 27.6% believed that ‘Made in Australia’ was the premium COO claim. It is apparent that more than one in three people appear to be clearly confused about the detail of COO representations. If we then add to this confusion the finding that 36% of the respondents were surprised by the COO definitions for a different reason (namely that while they were familiar with the terms, they had never sought out their real meanings), it is quite apparent that almost three out of every four Adelaide shoppers for orange juice either do not have a clear understanding of COO labelling terms, or appear not to care too much about where their orange juice comes from. The education process on COO issues has a long way to go. Taste appears to be a more important purchasing consideration.

**Table 3: Consumer responses to COO labelling terms**

	Frequency	Percent
Not surprised	71	27.2
Thought meant same thing	24	9.2
MiA premium origin claim	72	27.6
Different reason	94	36.0
Total	261	100.0

Chi-squared tests showed that gender and age were significantly associated with purchasers’ understanding of labelling terms. Females showed a greater

61 The respondents were told that, according to the ACCC, a ‘Made in Australia’ claim could be justified if the goods were substantially transformed in Australia, and that 50% or more of the costs of production or manufacture were incurred in Australia. A ‘Product of Australia’ claim was a premium claim, and to make it valid each significant component or ingredient of the good must originate in Australia, and all, or virtually all, of the production or manufacturing processes must occur in Australia.

62 Roy Morgan Research, above n 19.

understanding, with 18% of female respondents understanding both terms compared to only 8.7% of the male respondents. The older age groups generally had a better understanding of the terms than younger age groups; the 55–64 year age group comprised 38% of the respondents who understood the terms. This understanding may have been gained through earlier publicity campaigns. These findings have policy implications — there is a need to increase the understanding of COO labels in the younger age groups.

### Conclusions

Numerous empirical studies have been undertaken in Australia and overseas concerning the relationship between price and quality in consumer markets. Consumers tend to use price as a quality indicator if the price is the only source of information available to them. However, the COO of goods may also be taken as a quality indicator, and may influence consumers' buying behaviour and the price they are willing to pay for certain goods. The literature suggests that there is an expectation that Australian consumers will view products from their own country more favourably.

It is questionable whether consumers are as earnest as they claim to be in trying to purchase Australian-made orange juice. That is, desirability may not translate to behaviour. Although 71.1% of respondents in the survey agreed that they buy Australian orange juice whenever possible, from the results it is evident that other product attributes such as taste, especially, and price play an important role in consumer decision making. It is possible that a price reduction for brands with a large imported juice content could convert an active supporter of the 'Buy Australian' campaign into following a value-for-money criterion. Our findings suggest that previous Australian research with durable goods, which supported the existence of COO effects, may not be applicable to the orange juice product category where COO effects may be less significant when weighed against price and taste. Orange juice manufacturers should be aware that, while there is evidence of a COO effect among the respondents, taste and price remain significant considerations for consumers. Consequently, the local sourcing of orange juice, in isolation, is unlikely to guarantee that consumers will always choose the 'Australian Made' (to use the term generically) product. Producers should be aware of this in developing their marketing strategies.

Our study demonstrates that a very large majority of Adelaide consumers have heard of the labelling terms 'Made in Australia' and 'Product of Australia'. However, many did not understand the meanings of these terms. This suggests that while the 'Buy Australia' campaign has been successful in creating awareness and promoting the aims of the campaign, those interested in promoting the purchase of Australian goods, and indeed the ACCC as the prime guardian of consumer protection in Australia, need to consider how to best eliminate consumer uncertainty about the terms through increased education and the creation of awareness by consumers.

Orange juice is different to other product categories previously considered in COO research. It is not easy to simply explain the term 'country of origin' on a label, because difficulties arise out of the seasonal nature of the orange juice industry. Orange juice companies frequently rely on ingredients from a number of other countries if domestic juice is less readily available due to

seasonal factors. It is not cost effective to list all of these countries on every label, or to have separate labels for different times of the year. Consumers may have learnt over time to be comfortable with buying orange juice on the basis of price and taste, rather than looking specifically to buy a product sourced only or in large part from Australia. The question for policy is how to balance the desire of some consumers for accurate product information with the cost to producers of supplying this information.