

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 21/11/2025 5:42:00 PM AEDT
Date Accepted for Filing: 13/02/2026 5:44:34 PM AEDT
File Number: VID973/2024
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
COLES SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

Affidavit

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Australian Competition and Consumer Commission

Applicant

Coles Supermarkets Australia Pty Ltd (ACN 004 189 708)

Respondent

Affidavit of: Jack Eugene Jorgensen

Address: 800 Toorak Road, Hawthorn East, Victoria

Occupation: Senior Category Manager for Biscuits and Cookies at Coles

Date: 20 November 2025

Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Jack Eugene Jorgensen affirmed on 20 November 2025	[1]-[26]	2-5
2.	Exhibit "JJ-1", being a bundle of documents relating to the Bragg Seasoning Nutritional Yeast Product	[19]-[23]	4

Filed on behalf of (name & role of party) Coles Supermarkets Australia Pty Ltd (ACN 004 189 708), the Respondent

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[Version 3 form approved 02/05/2019]

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I, Jack Eugene Jorgensen of 800 Toorak Road, Hawthorn East, Victoria, Senior Category Manager at Coles, affirm:

- 1 I am the Senior Category Manager for Biscuits and Cookies at Coles Supermarkets Australia Pty Ltd (ACN 004 189 708) (**Coles**).
- 2 Shown to me at the time of affirming this affidavit and exhibited to this affidavit and marked **Exhibit JJ-1** is a consolidated set of documents. In this affidavit, I refer to each document by reference to the relevant tab number in Exhibit JJ-1 and where convenient by the document's identification number, stamped on the top right-hand corner of the first page. Where documents in Exhibit JJ-1 have attachments, the host document is numbered, for example, tab 1, with each of the attachments numbered tab 1.1 and tab 1.2 accordingly.

A. MY ROLES AT COLES

- 3 I have been employed by Coles since 30 November 2015 in the following roles:
 - (a) Buying and Trading Graduate from 30 November 2015 to 26 December 2017;
 - (b) Category Manager for Dairy Entertainment from 27 December 2017 to 12 May 2019;
 - (c) Category Manager for Coffee, Tea and Milk Additives from 9 March 2020 to 27 March 2022;
 - (d) Senior Category Manager for Health Foods from 28 March 2022 to 1 April 2025; and
 - (e) Senior Category Manager for Biscuits and Cookies from 1 April 2025.
- 4 Between 13 May 2019 and 8 March 2020, I worked at Coles Express as Category Manager for Tobacco, Forecourt and Auto.
- 5 Unless stated otherwise, the matters to which I refer in this affidavit concern the period when I was Senior Category Manager for Health Foods.

B. HEALTH FOODS CATEGORY

- 6 The Health Foods category sat within the broader Breakfast and Health business category, which in turn was part of Coles' Grocery business unit. Coles ranged between 500 and 1000 products in the Health Foods category. Suppliers within the category ranged from small businesses run by their founders to larger multinational suppliers.
- 7 The Health Foods category comprised six sub-categories: Bars and Bites; Breakfast; Cooking; Grains and Superfoods; Snacking; and Sports and Diet. During the time I was Senior Category Manager, some of these sub-categories, including Breakfast and Cooking, were moved to other categories and therefore fell under the responsibility of a different Category Manager. One of the products in the Grains and Superfoods sub-category was Bragg Seasoning Nutritional Yeast, which I address further below.
- 8 As Senior Category Manager, my main responsibilities were:
 - (a) developing and executing a category plan and strategy;
 - (b) working with suppliers to determine the products Coles acquired, promotions and promotional funding, and to reach agreement on suppliers' requests for increases to their list prices;
 - (c) setting Coles' retail prices;
 - (d) supporting the Business Category Manager (**BCM**) with planning including building annual plans, quarterly trade plans, promotional plans, pricing plans and ranging; and

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- (e) aiding and facilitating the transition of sub-categories into the portfolio of a different Category Manager, as I referred to in paragraph 7 above.

9 I reported to the BCM for Breakfast and Health, who was Melissa Matteo at the time. During the period from March to September 2022, the following people reported to me:

- (a) Katherine Pantelidis, Business Category Coordinator, who was responsible for providing administrative support for the category;
- (b) Luke Deering, Assistant Category Manager (**ACM**), who assisted me with trade or promotional planning, including planning promotions to run throughout the year, and negotiating and agreeing promotions with suppliers; and
- (c) Chloe Tan, Merchandise Graduate.

C. PRICES AND PROMOTIONS

- 10 When suppliers' costs increased, they could seek to increase the list prices of their products by submitting a 'Cost Price Alteration' (**CPA**) request to Coles. A 'list' price was the starting price the supplier charged for the product, i.e. the price it charged before any rebates, discounts, allowances and other adjustments. As Senior Category Manager, I was primarily responsible for deciding whether Coles accepted, partially accepted or rejected a CPA request in accordance with Coles' CPA policy.
- 11 Depending on the size and significance of the CPA request, I sometimes shared responsibility of negotiating CPAs with other team members in the category including my ACM (for smaller or less significant CPAs) and BCM (for larger or more significant CPAs).
- 12 During the Relevant Period, Coles regularly received CPA requests in the Health Foods category. Suppliers often explained that these requests were driven by changes in prices for commodities like cacao, psyllium husk and chia seeds. These commodity prices were not stable and often changed significantly over a short period.
- 13 Typically, CPA requests comprised a list of Stock Keeping Units (**SKUs**) and the amount of the list price increase requested by the supplier for each SKU. Most suppliers submitted an Excel-style CPA template by email or through Coles Supplier Central which captured data including the product ID, description, date of last list price change, current list price and proposed new list price.
- 14 Coles had a Vendor Management Office (**VMO**) that was responsible for assisting with the assessment of CPA requests. When suppliers submitted CPA requests, the VMO used publicly available information and any information the supplier provided to assess whether the input costs for the products concerned had increased by the amount the supplier claimed. This was referred to as 'validating' a CPA request.
- 15 When suppliers made a CPA request for products that they wanted Coles to sell on promotion after the CPA, they usually also provided a proposed plan for the promotions. Information in promotional plans (also known as 'trade plans') included the products that were the subject of the proposed promotion, the promotion type (or 'mechanic'), proposed prices and any proposed supplier funding.
- 16 In the Health Foods category, promotions were often jointly funded by Coles and the supplier. That is, Coles and the supplier jointly bore the cost of the discount to the product (i.e. the difference between the white ticket and Down Down prices of the product). From time to time, I placed a product on promotion without supplier funding (i.e. the promotion was funded only by Coles).

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17 Coles had business rules (or 'guardrails') with which promotions had to comply.

D. PRICE CHANGES FOR BRAGG SEASONING NUTRITIONAL YEAST

- 18 One of the first CPA requests that I dealt with in the Health Foods category was from Unique Health Products. Unique Health Products was a comparatively small supplier in terms of the number of products it supplied to Coles and the revenue Coles generated from those products. Its request was in relation to a single product, Bragg Seasoning Nutritional Yeast, a cheese substitute for vegan consumers.
- 19 The CPA request was submitted before I joined the Health Foods category and was initially managed by Sioned Read, the Senior Category Manager at the time. I do not have a strong recollection of dealing with this CPA request once I took over from Ms Read. There were a number of other CPA requests in the Health Foods category at the time. I may have delegated aspects of this request to my ACM but I do not have any specific recollection in this regard. I have sought to refresh my memory by reference to written communications I sent or received concerning the request, which include those at **tabs 1 – 3 and confidential tabs 3.1 – 9.1 of Exhibit JJ-1**.
- 20 The CPA request was for a 24.4% increase to the list price of the product. Initially, the VMO only validated a 2% increase in the list price due to an increase in Unique Health Products' costs. However, after Unique Health Products provided further information to Coles about its costs, the VMO was able to validate a cost increase of 17.1%. In light of this, on 17 July 2022, I informed Unique Health Products that Coles could accept a 17.1% increase to the list price of the product. These email communications are at **tabs 1 – 1.1, tab 3 and confidential tabs 3.1 – 5 of Exhibit JJ-1**.
- 21 On 18 July 2022, I received a request from Jackie Goldston of Unique Health Products for Coles to advise its planned sale price and promotional expectation for Bragg Seasoning Nutritional Yeast. On 26 July 2022, I informed Ms Goldston that Coles was still reviewing its future commercial and trade plan, and requested that Ms Goldston provide Unique Health Products' updated trading strategy to Coles. These email communications are at **confidential tabs 6 – 7 of Exhibit JJ-1** (COL.501.029.8518, COL.501.038.3551).
- 22 On 28 July 2022, Ms Goldston provided Unique Health Products' proposed revised trading strategy. Ms Goldston stated that "over the past few months, the price of Bragg Nutritional Yeast has reset to \$18.95 (following the rollout of our price rise to our retailer customers across Australia)" and proposed to Coles two alternative pricing options for Bragg Seasoning Nutritional Yeast. The first option was for Coles to accept a CPA of 17% (which was approximately the proportion of the CPA that had been validated and accepted by Coles) and to sell the product at its RRP of \$18.95 for four weeks then at an Everyday Low Price (**EDLP**) of \$16.50 for 48 weeks. In this scenario, the supplier proposed no additional funding. The second option was for Coles to accept a CPA of 24% and to sell the product at the product's new RRP of \$18.95 for 40 weeks and \$15 for 12 weeks over the next 12 month period. In this scenario, the supplier proposed a regular scan deal to support the discount. This email is at **confidential tabs 8 – 8.1 of Exhibit JJ-1** (COL.501.034.0873, COL.501.034.0874).
- 23 Suppliers sometimes used the expression 'EDLP' to refer to either the Every Day mechanic or the Down Down mechanic. On 27 August 2022, I said to Ms Goldston that I thought an EDLP strategy would be a good option for Bragg Seasoning Nutritional Yeast. This email is at **confidential tabs 9 – 9.1 of Exhibit JJ-1** (COL.501.027.0849, COL.501.027.0850). I do not recall whether I had in mind the Every Day mechanic or Down Down mechanic. However, both

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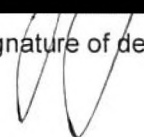
could involve selling products at consistently low prices. In contrast, the second pricing option that Ms Goldston proposed was a 'Hi-Lo' strategy that involved selling the product at a white ticket price and, around one out of every four weeks, on a Special promotion. I considered a 'Hi-Lo' strategy to be better suited to products that consumers bought on impulse, rather than products like Bragg Seasoning Nutritional Yeast, which I considered to be more of a staple product for the customers who generally purchased it. Although I would usually negotiate funding to put a product on Down Down, in this case, I agreed to promote the product on Down Down with no promotional funding. I don't remember specifically why this was the case although I believe it was because we were accepting a lower cost price increase (17%) than what the supplier had requested (24%).

- 24 Ultimately, the retail pricing strategy that was followed was to sell the product at a white ticket price of \$19 for four weeks, then on Down Down at \$16.50.
- 25 I do not recall my decision to set a white ticket price of \$19. However, when setting white ticket prices I usually had regard to the supplier's RRP (which, in this case, was \$18.95 and which was also the price Unique Health Products had informed us Bragg Nutritional Yeast was selling at in the market), and sought to set prices at rounded numbers rather than just under.
- 26 I do not recall the decision to place the product on Down Down (as opposed to selling it at an Every Day price). However, the 'EDLP' option in the proposed promotional plan involved selling the product at a white ticket price for four weeks before moving to an EDLP. At the time, the guardrails required products to be sold at a white ticket price for four weeks before they could be placed on the Down Down program. There was no similar requirement for selling products on an Every Day ticket. Bragg Seasoning Nutritional Yeast was sold at a white ticket price from 29 September to 25 October 2022 before being placed on the Down Down program on 26 October 2022. The reference to 'EDLP' in the proposed trade plan may therefore have been intended to be a reference to Down Down.

Affirmed by the deponent)
 at Hawthorn East, Victoria)
 on 20 November 2025)
 Before me:)
)

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Signature of deponent



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Signature of witness

GEMMA GRANT
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 An Australian legal practitioner within the meaning
 of the Legal Profession Uniform Law (Victoria).