

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua o Aotearoa
Tāmaki Makaurau

CIV-2024-404-2418

between: **Greenpeace Aotearoa Incorporated**

a registered charity having its registered office at 11 Akiraho
Street, Auckland, New Zealand

Plaintiff

and: **Fonterra Brands (New Zealand) Limited**

a company having its registered office at 109 Fanshawe Street,
Auckland Central, Auckland New Zealand

Defendant

Statement of defence

Dated: 30 January 2025

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STATEMENT OF DEFENCE

The defendant, Fonterra Brands (New Zealand) Limited (**Fonterra Brands**), by its solicitor says by reference to the paragraphs of the plaintiff's amended statement of claim dated 4 December 2024:

Parties

- 1 It admits paragraph 1.
- 2 It has insufficient knowledge of, and therefore denies, paragraph 2.
- 3 It says that it is a company carrying on business as a seller of dairy products having its registered office at 109 Fanshawe Street, New Zealand and otherwise denies paragraph 3.
- 4 It admits paragraph 4.
- 5 It admits paragraph 5.
- 6 It admits paragraph 6.
- 7 It denies paragraph 7 and further says that Fonterra Brands uses the Anchor brand under licence in New Zealand for a range of New Zealand products.
- 8 It denies paragraph 8 and says further that:
 - 8.1 the butter that it sells under the Anchor brand is produced by another Fonterra subsidiary, which then sells it to Fonterra Brands; and
 - 8.2 it does not sell Anchor butter to consumers; it sells Anchor butter to wholesalers and retailers, which in turn sell it to consumers.

Packaging and labelling of Anchor butter

- 9 It admits paragraph 9 save that it refers to paragraph 12 below, and says that:
 - 9.1 from mid-late November 2024 Fonterra Brands started introducing new packaging for its Anchor butter; and
 - 9.2 as of 30 January 2025 Anchor butter with the packaging shown in the amended statement of claim dated 4 December 2024 (the **Prior Packaging**) is no longer being manufactured.
- 10 It admits that the Prior Packaging is set out in Schedule 1 of the amended statement of claim.

- 11 In response to paragraph 11, it:
 - 11.1 admits the Prior Packaging contained a label (the **Label**);
 - 11.2 says the Label contained two distinct statements:
 - (a) "100% New Zealand"; and
 - (b) "Grass Fed";

(the **Statements**);
 - 11.3 says the Statements would be understood by consumers to be separate statements, which convey different impressions; and
 - 11.4 otherwise denies paragraph 11.
- 12 In response to paragraph 12, it:
 - 12.1 admits that Anchor butter bearing the Prior Packaging and the Label was sold in supermarkets and dairies throughout New Zealand at the time of the filing of the amended statement of claim;
 - 12.2 says further that:
 - (a) Anchor butter bearing the Prior Packaging and Label is no longer being manufactured or sold by Fonterra Brands to its customers; and
 - (b) subject to market sales, it anticipates that the vast majority of Anchor butter bearing the Prior Packaging and Label will become unavailable for purchase in the majority of supermarkets and dairies by the end of March 2025.

First cause of action (Fair Trading Act 1986, ss 9 and 10)

- 13 In response to paragraph 13, it:
 - 13.1 repeats paragraph 11 above;
 - 13.2 admits paragraph 13(a);
 - 13.3 denies paragraphs 13(b) and (c);
 - 13.4 says further that the statement "Grass Fed", in the context of the Label and in light of what would be reasonably understood by consumers, conveyed the impression to the typical consumer that Anchor butter is made from milk from cows

that spend most of their non-milking time outside on pasture and which are predominantly fed grass and grass-derived feeds (including hay, straw, silage, baleage, or similar feeds (**Hay**)); and

13.5 otherwise denies paragraph 13.

14 In response to paragraph 14, it repeats paragraphs 11 and 13 above, denies that the Label was or is liable to mislead the public as to the nature, manufacturing process or characteristics of Anchor butter bearing the Label either at all or for any of the reasons pleaded at paragraphs 14(a) to 14(l) and:

14.1 admits that Anchor butter is made from milk sourced from Fonterra farmers;

14.2 admits that Fonterra farmers' cows are not necessarily entirely fed grass and grass-derived feeds;

14.3 denies that Fonterra farmers' cows are fed on a "dry matter" basis and refers to its pleading at paragraph 14.12 below;

14.4 admits that supplementary feeds (which include grains, grain silages, concentrates (such as vegetable waste), and palm kernel expeller (**PKE**) (**Supplementary Feeds**)) are not necessarily grass or grass-derived;

14.5 admits that supplementary feeds include PKE and refers to paragraph 14.12 below;

14.6 admits that PKE is not grass or grass-derived;

14.7 admits that PKE is not produced in New Zealand, and that it is imported from sources in Malaysia; and otherwise has insufficient knowledge of, and therefore denies, paragraph 14(g);

14.8 has insufficient knowledge of, and therefore denies, paragraph 14(h);

14.9 admits that Fonterra farmers' cows consume legumes and brassicas, which are typically grown on farm;

14.10 denies that all legumes are not grass or grass-derived; and says further that some legumes are, or are understood to be, grass or grass-derived;

14.11 admits that brassicas are not grass or grass-derived;

14.12 in relation to paragraph 14(l), repeats 14.3 and 14.9–14.11 above and:

- (a) admits that the "*Fonterra Grass and Pasture Fed Standard*" (the **Standard**) requires, on average, that Fonterra's farmers' cows consume at least 80% of their diet as grass, determined on a "dry matter basis";
- (b) says further that, in the Standard:
 - (i) "dry matter basis" refers to a method of calculation of nutrients in feed in which the water content of feed is reduced to an unrealistic 0% purely for comparison purposes, as compared to an "as consumed basis" (i.e., incorporating the water content in the grass, which is how it is consumed); and
 - (ii) 'Grass' is defined to include grass, grass silage, hay and forage crops;
- (c) says further that the definition of 'Grass' in the Standard reflects industry practice in New Zealand;
- (d) admits that based on the criteria and definitions in the Standard, and other assumptions, Fonterra has stated that its farmers' cows are 96% grass fed;
- (e) says further that neither the Label nor the Packaging reference the Standard;
- (f) says further that during the 2023/24 season, when measured as consumed, Fonterra's farmers' cows' diet on average consisted of:
 - (i) 96.7% grass (including grass, Hay and forage crops):
 - (A) 92.4% grass and Hay; and
 - (B) 4.2% forage crops; and
 - (ii) 3.3% Supplementary Feeds (including approximately 1.3% PKE); and
- (g) otherwise denies paragraph 14(l).

14.13 otherwise denies paragraph 14.

15 In response to paragraph 15, it:

- 15.1 repeats paragraphs 13.4 and 14 above; and otherwise denies paragraph 15(a);
- 15.2 repeats paragraphs 13.4, and 14.9 to 14.12 above and otherwise denies paragraph 15(b);
- 15.3 repeats paragraphs 13.4, 14.4 and 14.12 above and otherwise denies 15(c);
- 15.4 repeats 13.4, 14.3 and 14.12 above, and otherwise denies 15(d);
- 15.5 repeats 14.5, 14.7 and 14.12 above and otherwise admits that neither the Prior Packaging nor the Label identify that the butter may be produced from milk from some cows that eat feed imported from outside New Zealand;
- 15.6 repeats 14.12 above, says further that the Standard is commonly referred to as the "Grass and Pasture Fed Standard", and otherwise admits that neither the Prior Packaging nor the Label identify that Fonterra has a "Grass and Pasture Fed Standard";
- 15.7 repeats paragraphs 14.2, 14.3, 14.12 and 15.6 above and otherwise admits that neither the Prior Packaging nor the Label identify that Fonterra's "Grass and Pasture Fed Standard":
 - (a) defines grass to include Hay and forage crops; or
 - (b) allows for up to 20 per cent of a cow's diet on a dry matter basis to consist of supplemental non-grass feeds such as PKE;
- 15.8 repeats 13.5, 14.3 and 14.12 above and admits that neither the Prior Packaging nor the Label identify that Fonterra considers its farmers' cows are 96 per cent grass fed; and
- 15.9 otherwise denies paragraph 15.
- 16 It denies paragraph 16.
- 17 It admits that Fonterra Brands is, and was, at all material times, including when supplying butter branded with the Label and the Prior Packaging, in trade but otherwise denies paragraph 17.

Second Cause of Action (Fair Trading Act 1986, s 13)

18 In response to paragraph 18, it:

18.1 repeats paragraphs 13 to 16 above; and

18.2 otherwise denies paragraph 18.

This document is filed by Nicola Kate Swan, solicitor for the defendant, of the firm Chapman Tripp. The address for service of the defendant is at the offices of Chapman Tripp, Level 6, 20 Customhouse Quay, Wellington 6140.

Documents for service on the defendant may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 993 Wellington 6140; or
- (b) emailed to the solicitor by the email addresses on the front page of this document provided that a hard copy is also posted.