

Operative provisions

1.1 **Definitions**

Unless the context otherwise requires, the following terms shall have the following meanings:

"Claim" Means any claim, cost, damages, debt, expense, liability, loss, allegation, fault, suit, action, demand, cause of action or proceeding (other than those given by or arising out of this Deed) irrespective of how or when it arises, whether it is actual or contingent, and whether or not it arises at law, equity or in any other way.

1.2 **Interpretation**

In this Deed, unless the context requires another meaning:

- (a) Words in the singular include the plural and vice versa;
- (b) Any gender includes the other genders;
- (c) The word 'including' or 'includes' means including, without limitation;
- (d) A reference to:
 - (i) a party means a party to this Agreement;
 - (ii) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

- (e) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (f) a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (g) a law which is an Australian Law:
 - (i) includes a reference to any legislation, judgment, rule of common law or equity;
 - (ii) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (iv) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law; and

1.3 **Headings**

Headings are for convenience only and do not affect interpretation.

1.4 **Recitals**

The recitals are included in and form part of this Deed.

2. **Take downs and enforceable undertakings re republication**

- 2.1 As soon as possible after this Deed is executed, and in any event within 72 hours thereof, Mulvany must cause the posts set out in Schedule 1 to be removed from the internet.
- 2.2 Mulvany undertakes not to republish, whether on the internet or otherwise, any of those posts.
- 2.3 The parties agree that the undertakings in this clause by Mr Mulvany will be enforceable to the greatest extent permissible by law, and Mr Mulvany acknowledges that damages would not be an adequate remedy for breach of these undertakings and agrees that it would be appropriate that injunctions would issue against him at the suit of Capilano or McKee to enforce compliance with those undertakings.

3. Enforceable undertakings re representations

- 3.1 Mulvany undertakes not to publish, whether on the internet or otherwise, any representation to the effect or like effect of the matters set out in Schedule 2 hereto (“**the Representations**”);
- 3.2 Further, Mulvany undertakes that should any internet posting by a third party to the effect, or like effect, of any of the Representations:
- (a) come to his attention; or
 - (b) be brought to his attention by Capilano,
- he will use all reasonable endeavours to cause such post(s) to be removed forthwith, to the extent it is within his power to do so.
- 3.3 The parties agree that the undertakings in this clause by Mr Mulvany will be enforceable to the greatest extent permissible by law, and Mr Mulvany acknowledges that damages would not be an adequate remedy for breach of these undertakings and agrees that it would be appropriate

that injunctions would issue against him at the suit of Capilano or McKee to enforce compliance with those undertakings.

4. Releases

- 4.1 Mulvany hereby releases and forever discharges and holds harmless Capilano and McKee from all and any Claim or Claims each party may have or may have had against one or more of the other parties with respect to or in any way connected with the subject matter of either the Capilano proceedings or the Mulvany proceedings, but not so as to prevent the enforcement of the rights conferred by this Deed.
- 4.2 Subject to Mulvany's compliance with clauses 2 and 3 of this Deed, Capilano and McKee hereby release and forever discharge and hold harmless Mulvany from all and any Claim or Claims each party may have or may have had against one or more of the other parties with respect to or in any way connected with the subject matter of either the Capilano proceedings or the Mulvany proceedings, but not so as to prevent the enforcement of the rights conferred by this Deed.
- 4.3 Each party will bear its own costs of the Capilano proceeding and the Mulvany proceeding and releases each other party from any claim in respect of any entitlement to costs:
- (a) Under the Court Rules consequent on the conclusion of either set of proceedings;
 - (b) Under any order for costs made in the Proceeding.
- 4.4 For the avoidance of doubt, Clause 4.1 and 4.2 above shall not apply to proceedings arising out of or in connection with rights and obligations under this Deed.

5. Court orders

5.1 As soon as practicable after the execution of this Deed, the parties will take all steps necessary to seek that the Supreme Court of New South Wales makes orders disposing of the Capilano proceedings and the Mulvany proceedings on terms that, in each of the Capilano proceedings and the Mulvany proceeding:

- (a) the Court notes that the parties have entered into a confidential agreement to settle the proceedings;
- (b) the proceedings be otherwise discontinued, with no order as to costs.

6. Dowling material and destruction of recording

6.1 Mulvany undertakes that he will not publish, whether on the internet or otherwise, material from Mr Shane Dowling, or links to any material from, or any website operated or controlled by, Mr Shane Dowling (“**Dowling material**”).

6.2 Further, Mulvany undertakes that should it:

- (a) come to his attention; or
- (b) be brought to his attention by Capilano,

that a third party has posted Dowling material, he will use all reasonable endeavours to cause such posting to be removed forthwith, to the extent it is within his power to do so.

6.3 Mulvany will destroy the recording made on or about 26 May 2016 of any conversation between him and Ben McKee (**Recording**) and any copy of the Recording in his possession.

6.4 Further, Mulvany undertakes that should it:

- (a) come to his attention; or
- (b) be brought to his attention by Capilano,

that a third party has a copy of the Recording, he will use all reasonable endeavours to cause such recording to be destroyed forthwith, to the extent it is within his power to do so.

7. Good faith discussions and negotiations

Capilano and Mulvany agree that in the 12 months following execution of this Deed, they will engage in good faith discussions and negotiations to see if it is in their common interest for Capilano to provide material to be published on the internet by Mulvany, on such terms as may be agreed between them, and on such topics and in such manner, if any, as may be mutually agreed.

8. Joint statement on settlement and confidentiality

8.1 Upon the finalisation of the Capilano proceedings and the Mulvany proceedings, the parties agree that either or both of them are at liberty

to publish, whether on the internet, or otherwise, a statement to the effect of that appearing in Schedule 3.

8.2 Except as provided for by clause 8.1, no party to this Deed will make any public statement about the outcome of the proceedings.

8.3 The contents of this Deed will be confidential between the parties.

8.4 The contents of this clause of the Deed do not prevent Capilano taking reasonable steps to inform its members and employees of the general nature of the contents of this Deed.

9. Further assurance

Each party shall promptly execute all such documents and do all such acts and things (or procure the execution or doing as the case may be) as are necessary or desirable to give full effect to the provisions of this Deed.

10. Entire agreement and like matters

10.1 This Deed constitutes the entire agreement of the parties about the subject matter of this Deed and supersedes and expressly revokes all other representations, negotiations, arrangements, understandings or agreements and all other communications.

10.2 No party has entered into this Deed relying on any representations made by or on behalf of the others, other than those expressly made in this Deed.

10.3 This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

11. Governing law

This Deed is governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales including the Federal Courts sitting in that State.

12. Execution

This Deed may be executed in counterpart of each party and may be exchanged by exchange of email copies of any of those counterparts.

EXECUTED AS A DEED

Executed by Capilano Limited)
(ACN) in accordance with Section)
127 of the Corporations Act 2001 (Cth))

.....
Signature of director

.....
Signature of director / company
secretary

.....
Name of director

.....
Name of director / company secretary

SIGNED SEALED AND DELIVERED)
by **Ben McKee** in the presence of:

.....
Signature of Witness

.....
Signature of **Ben McKee**

.....
Name of Witness
(Please print)

SIGNED SEALED AND DELIVERED)
by **Simon Mulvany** in the presence of:

.....
Signature of Witness

.....
Signature of **Simon Mulvany**

.....
Name of Witness
(Please print)

Schedule 1: Postings to be taken down

1. [To be inserted by Capilano]

**Schedule 2: Representations (or any to like effect)
which cannot be made by Mr Mulvany**

1. Honey sold under the Capilano brand contains imported honey.
2. Honey sold under the Allowrie brand is toxic or poisonous or dangerous or contaminated.
3. Honey sold under the Wescobee brand is toxic or poisonous or dangerous or contaminated.
4. Honey sold under the Smiths brand is toxic or poisonous or dangerous or contaminated.
5. Capilano misleads consumers to believe that its honey products do not contain imported honey.
6. Capilano or any of its officers are motivated by greed to sell toxic honey.
7. Capilano or any of its officers use trickery to market and sell honey.
8. Capilano or any of its officers are dishonest.
9. Capilano or any of its officers are corrupt.
10. Capilano or any of its officers are bullies.
11. Capilano engages in profiteering.
12. Capilano acts contrary to the interests of local bee keepers.
13. Capilano illegally imports and sells honey.
14. Capilano practices inadequate quality control.
15. Capilano is owned/controlled by Kerry Stokes.
16. Capilano exploits or mistreats bees.
17. Capilano rips off consumers.
18. Capilano engages in scams with retailers.
19. Capilano has demanded that retailers remove competitor brands from their shelves.
20. Capilano or any of its officers are misogynist or sexist.
21. Capilano has bribed Choice and/or public officials.
22. Capilano is in breach of labelling laws.
23. Capilano has lobbied for a change to labelling laws to dilute or weaken them.
24. Capilano has damaged or tarnished the Australian honey producing industry and Australian beekeepers.

Schedule 3: Joint statement

Capilano Honey and Simon Mulvany have agreed to resolve their court cases.

They do so following a productive meeting between them and in the belief that this is in the best interests of each of them, and of the honey producing industry generally.

Simon Mulvany now accepts that Capilano Honey products are not poisonous, toxic, contaminated or dangerous as some of his publications suggested. He also accepts that Capilano's labelling is not misleading.

Neither Mr Mulvany nor Capilano will be making any further statement on this matter.

Capilano Honey Limited

Simon Mulvany