



David Peters
Kinsman Legal
54 Bunbury Street
Footscray, VIC 3011

13 May 2020

Anti-Dumping Commission
Level 6, 215 Spring Street
MELBOURNE VIC 3000

By email: Leisa.Baynham@adcommission.gov.au, Investigations3@adcommission.gov.au

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Investigation 548 (the investigation) – Certain kraft paperboard exported from the United States of America (US)

**Submission on behalf of Graphic Packaging International LLC and Graphic Packaging International Australia Converting Ltd (GPI) to the Anti-Dumping Commission (ADC)
Application for publication of dumping duty notice (the application) by Visy Glama Pty Ltd (Visy)**

Dear Leisa

GPI is grateful for the opportunity to make a submission on the investigation. GPI makes the following submissions:

1. The injury claimed by Visy is no greater than that likely to occur in the normal ebb and flow of business (see section 1 below).
2. Microflute¹ is not in any event a like good to kraft paperboard² the subject of the investigation (see section 2 below).

On those bases, GPI submits that the ADC should proceed to terminating the investigation at the earliest possible juncture.

In any event, GPI stands ready to assist the ADC in the investigation. Please don't hesitate to contact me if you require any further information to that provided in this submission.

¹ The term microflute refers to narrow caliper corrugated cardboard used in packaging. More specifically, microflute is corrugated cardboard with a thickness of less than 1.5mm and more than 300 flutes per metre. Microflute is used in a variety of packaging applications including packaging for beverages, fast food, electronic products and cosmetics. Visy claims that microflute is a like good to kraft paperboard.

² The goods under consideration are kraft paperboard, coated on one side with clay or other inorganic substances, grammage 360-430 gsm, wet strength treated.



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1. The injury claimed by Visy is no greater than that likely to occur in the normal ebb and flow of business
 1. GPI submits that the injury claimed by Visy is no greater than that likely to occur in the normal ebb and flow of business.³ Indeed, losing a contract to a competitor (the injury claimed by Visy) is exactly what would be expected in the normal ebb and flow of business in this or any other industry.
 2. The *Ministerial Direction on Material Injury 2012 (the Ministerial Direction)* states that, consistent with Australia's obligations under the WTO Anti-Dumping Agreement (**WTO Agreement**) the injury claimed to be caused by dumping should be material in degree. In particular the injury claimed must be greater than that likely to occur in the normal ebb and flow of business.⁴ "Normal" means that it is the usual, typical, or expected state or condition.⁵
 3. It is clear from the application that Visy's claim of injury is founded solely on the loss of a single contract.⁶ It is clearly lost on Visy that Australia's anti-dumping system and the WTO Agreement is not designed for a thin-skinned producer that has a fit of pique because it lost a single commercial contract to a competitor. The Ministerial Direction makes that tolerably clear.
 4. The application complains that the contract, with a "large beverage supplier", was major.⁷ But there is no suggestion in the application that large suppliers are anything other than normal in this industry. Indeed, the Australian beverage market is primarily supplied by large suppliers, including the likes of Coca-Cola Amatil, Lion, Asahi/Schweppes/Pepsi, Carlton and Union Breweries, Campari and Diageo – it does not strain the language in the least to say that large suppliers are quite *normal* in this industry. It follows that contracts with such beverage suppliers will normally be major and winning or losing such contracts is exactly what would be expected in the normal ebb and flow of business in this industry.⁸
 5. The ADC is required to comply with the Ministerial Direction under s 269TA of the *Customs Act 1901 (the Act)*. The Ministerial Direction states that injury claimed by an applicant must be greater than that likely to occur in the normal ebb and flow of

³ This proceeds on the generous assumption that microflute is a like good to kraft paperboard. GPI considers that microflute is *not* a like good to kraft paperboard for the reasons stated in section 2 below.

⁴ Ministerial Direction at page 1.

⁵ Definition of "normal", Lexico.com.

⁶ The application at pages 27 to 29.

⁷ The application at page 27.

⁸ Large packaging contracts in Australia can go both ways. For example, a number of years ago GPI (then trading as Multiboard and Riverwood P/L) supplied food trays to McDonald's in Australia using kraft paperboard; these are now supplied by Visy (using the same microflute that Visy uses for beverage packages).



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business. The injury claimed is exactly what would be expected in the normal ebb and flow of business in this industry.

6. Accordingly, GPI submits that the investigation should be terminated at the earliest possible juncture. For its part, Visy should reflect on the fact that it has resorted (in plain sight of all its customers) to invoking Australia's anti-dumping system and an international trade agreement against the United States, a close ally and trading partner, merely because it lost a single commercial contract to a competitor.

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2. Microflute is not a like good to kraft paperboard

7. GPI submits that microflute is not a like good to kraft paperboard. Visy's claim that microflute is a like good to kraft paperboard is demonstrably incorrect.
8. The similarities between microflute and kraft paperboard are superficial but the differences are fundamental. That much is clear to the packaging industry. The packaging industry does not regard microflute as a type of paperboard at all (let alone as alike to kraft paperboard). The *Handbook for Pulp and Paper Technologists*⁹ devotes a chapter to paperboard (of which kraft paperboard is a type), describing it in the following terms:¹⁰

Paperboard can be loosely defined as "stiff and thick paper". The line of demarcation between paper and paperboard is somewhat vague but has been set by the ISO at a grammage of 224 g/m².

9. In contrast, microflute (under its technical designations as types of corrugated cardboard, E, F, G and N flute) is not any type of paper or paperboard but is the result of *converting* paper products.¹¹ Corrugated board (including E, F, G and N flute) is not a paper product *per se*, but an *end use* of paper products, ie it is at a different level in the packaging supply chain.¹² Unsurprisingly therefore, the physical specifications used by the packaging industry are different for microflute and kraft paperboard: kraft paperboard specifications are stated in grams per square metre whereas microflute specifications are stated in thickness and number of "flutes" per metre.¹³
10. Visy admits that there are production differences between microflute and kraft paperboard.¹⁴ But Visy substantially understates the production differences; for example, the different layers in Visy's microflute are made on different machines, at different plants and from different materials.¹⁵ One of the layers is then printed in roll form and wound back up. The layers are then combined, using adhesives, on yet another machine. In contrast, kraft paperboard is produced on a single machine.

⁹ Gary Smook, *The Handbook for Pulp and Paper Technologists*, also known as the Smook Book is now in its fourth edition. The Technical Association of Pulp and Paper Industry describes it as "the "Must Have" book for professionals in the Pulp & Paper Industry" and "the preferred and most widely used P&P text by companies, colleges, and universities", <https://www.tappi.org/publications-standards/books/deals/smook-book/>.

¹⁰ *The Handbook for Pulp and Paper Technologists*, 3ed, at chapter 19.

¹¹ *The Handbook for Pulp and Paper Technologists*, 3ed, generally at chapter 23 and specifically at section 23.1.

¹² *The Handbook for Pulp and Paper Technologists*, 3ed, at chapter 23.

¹³ Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in J. of Korea TAPPI 41(5) 2009 at page 8.

¹⁴ The application at section A-3-4 d).

¹⁵ The application at section A-3-3.

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11. In addition, GPI submits that microflute is demonstrably not alike to kraft paperboard physically (see section 2.a below) or commercially (see section 2.b below).
12. GPI submits that Visy's like goods argument is centred on the *end use* of microflute and kraft paperboard.¹⁶ As the ADC knows, end use or functional likeness will not of itself establish like goods but may support an assessment of physical and commercial likeness.¹⁷ Notwithstanding Visy's fixation with end use, GPI submits that microflute and kraft paperboard are demonstrably not functionally alike for the reasons set out in section 2.c below.
 - a. Microflute is not physically alike to kraft paperboard
13. GPI submits that microflute is not physically alike to kraft paperboard.
14. Visy primarily refers to (a single) *end use* to justify its claim that microflute and kraft paperboard are physically alike.¹⁸ That is simply the wrong approach when assessing physical likeness. The correct approach is rather to assess which *physical* characteristics are similar, and to identify the extent of physical differences.¹⁹
15. Visy argues that the average consumer may not be able to distinguish between the two but that argument is based on the different goods *in their end use* as beverage packaging, following substantial processing into packaging (conversion).²⁰ Again, that is not the correct assessment for determining the extent of physical likeness of the goods under consideration and the claimed like goods.
16. The following photograph shows GPI's kraft paperboard (on the left) and Visy's microflute (on the right). The Visy microflute pictured was used in beverage packaging for the contract that Visy lost (and on which its sole claim to injury is based, see section 1 above). The kraft paperboard pictured is used in the beverage packaging for the same customer for a similar sized package.

¹⁶ See for example the application at sections A-3-4 a), A-3-4 b), A-3-9.

¹⁷ Anti-Dumping Commission, *Dumping and Subsidy Manual (Manual)* at section 2.3.

¹⁸ The application at section A-3-4 a).

¹⁹ Manual at section 2.3.

²⁰ The application at section A-3-4 a).

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Figure 1 - kraft paperboard and microflute

17. The products are clearly not physically alike:

- a. The edge of the microflute shows three distinct layers with the middle layer being corrugated and made from different material; the kraft paperboard is solid.
- b. The microflute is substantially thicker (at 0.85 millimetres thick) than the kraft paperboard (at 0.55 millimetres thick); on that basis, the microflute is 55 per cent thicker than the kraft paperboard.
- c. The surface of the microflute has distinctive parallel “washboard” undulations because of the underlying corrugated inner layer. The kraft paperboard has a flat surface, which is good for printing and tends to be more visually appealing on supermarket shelves.

18. In addition, compared physically at the correct level in the supply chain²¹ microflute is printed²² but kraft paperboard is not printed.²³ That fact is highly inconvenient to Visy’s physical likeness argument; that fact alone, clear on the face of Visy’s application, should suffice to disprove Visy’s like goods claim.

19. The substantial physical differences are not limited to appearance. For example:

- a. One or more of the layers in microflute are made with recycled fibres whereas kraft paperboard is made primarily with virgin pine fibre. Virgin

²¹ The correct level in the supply chain for the comparison of the goods is when GPI’s kraft paperboard comes over an Australian dock and when the three layers are joined to form Visy’s microflute.

²² The application at section A-3-3.

²³ The application at section A-3-1; the kraft paperboard shown in Figure 1 was printed in Australia.

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fibres are generally longer than recycled fibre giving kraft paperboard greater inherent strength.

- b. Microflute contains adhesives that hold the three layers together and its strength and rigidity come from combining the liner board outer layers with the fluted layer to create an “I beam” effect. Kraft paperboard does not contain adhesives; its (less rigid) strength comes by virtue of its long pine wood fibres and the much higher “basis weight”²⁴ of a solid fibreboard sheet.
- c. The different underlying physical structure of microflute means that has less inherent flexibility than kraft paperboard and cannot bend significantly before it forms unsightly irregular creases.
- d. Microflute quickly delaminates and becomes soggy and unstable when it becomes wet whereas wet strength treated kraft paperboard retains its shape and strength. This is an important difference for beverage packaging because:
 - i. Filling systems and packaging lines in beverage factories are known to be wet environments.
 - ii. Beverages are subject to a wide range of temperatures in the supply chain resulting in condensation.
 - iii. Packages of beverage are often stored by consumers in ice and ice water prior to consuming.

b. Microflute is not commercially alike to kraft paperboard

20. GPI submits that microflute is not commercially alike to kraft paperboard.

21. Visy barely addresses the important consideration of commercial likeness, claiming only that microflute and kraft paperboard are both sold “to customers that are beverage companies”.²⁵ Visy’s highly superficial assessment ignores important commercial facts that stem from material physical differences between microflute and kraft paperboard.

22. In particular, [confidential pattern of sales of kraft paperboard: [REDACTED]
[REDACTED]
[REDACTED]] and GPI understands that most microflute produced in Australia does not compete with wet strength treated kraft paperboard.

²⁴ Basis weight is the weight of paper cut to the basic size for a particular grade of paper. Basis weight strongly influences the strength properties of a paper, as well as such other properties as thickness, opacity, and runnability. See http://printwiki.org/Basis_Weight.

²⁵ The application at A-3-4 b).

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This shows, firstly, that microflute and kraft paperboard are not commercially alike and, secondly, that the microflute industry (properly defined)²⁶ is highly unlikely to have suffered material injury from kraft paperboard.

[Start confidential – GPI production and sales of different sized beverage packages]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

²⁶ See the discussion below at paragraphs 29 ff regarding Visy's response to question A-3-9 regarding the Australian industry.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

26.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[End confidential – GPI production and sales of different sized beverage packages]

27

[Redacted]

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Most microflute produced and sold in Australia does not compete with wet strength treated kraft paperboard sold in Australia

29. Visy's approach to the important question of commercial likeness and other microflute production merely assumes Visy's preferred answer. For example, when required by application form B108 at question A-3-9 to supply a list of the names and contact details of other Australian producers of like goods, Visy states (emphasis added):²⁸

Visy Glama is the sole manufacturer of like products. There are no other Australian manufacturers of finished beverage can multipacks.

30. Visy answers an entirely different question to the question that question A-3-9 asks. The question concerns other Australian producers of the goods claimed to be like goods to the goods under consideration. But the goods under consideration are not any sort of beverage packaging; the goods under consideration are, as Visy itself states in its application, "kraft paperboard, coated on one side with clay or other inorganic substance, grammage 360-430 GSM, wet strength treated".²⁹
31. For the moment, we make the generous assumption that Visy's answer to question A-3-9 was a mere misstatement of Australian producers of claimed like goods.³⁰ Visy cannot have meant that Australian producers of claimed like goods were such by virtue of the fact that they are manufacturers of finished beverage can multipacks. Rather Visy must have meant that producers in Australia of goods that are alike to kraft paperboard are Australian *manufacturers of microflute*; that must be Visy's best answer to question A-3-9.
32. As Visy's application states, the term microflute refers a narrow caliper corrugated cardboard used in packaging. More specifically, microflute is corrugated cardboard with a thickness of less than 1.5mm and more than 300 flutes per metre;³¹ different thicknesses of microflute are referred to as E-Flute, F-Flute, G-Flute and N-Flute.³² What Visy's application omits to say is that microflute is used in a variety of packaging applications, not only beverages; these applications include consumer

²⁸ The application at A-3-10.

²⁹ The application at A-3-1.

³⁰ GPI submits that Visy's answer to question A-3-9 is not a mere misstatement of the Australian producers of claimed like goods but indicates a foundational flaw in Visy's application and a fundamental misapprehension of the statutory concept of like goods. On the basis of Visy's response to question A-3-9 then GPI, West Rock and others must also form part of the Australian industry.

³¹ Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in J. of Korea TAPPI 41(5) 2009 at page 8; see also Hartikainen, K, *Corrugated board manufacturing, In Paper and Paperboard Converting*, Savolainen, A (Ed), *Papermaking Science and Technology* series vol. 12, Fapet Oy, Finland at page 244 (1988).

³² These are also referred to as small flute, mini flute or fine flute, see Gary A Smook, *Handbook for Pulp & Paper Technologists*, 3ed at page 351; there are also other categories of corrugated cardboard packaging call A-Flute, B-Flute and C-Flute – these are thicker and are not regarded as microflute.

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packaging generally, display packaging and packaging for fast food,³³ electronic products and cosmetics.³⁴

33. Visy's own website states that,³⁵ in addition to beverage packaging, it also supplies packaging for retail, fruit and produce, meat and seafood, pharmaceutical / health and beauty, food; GPI understands that much of this packaging may be microflute. For example, Visy supplies food trays to McDonald's and Hungry Jack's made from the same thickness microflute that it uses for beverage packages; these contracts held by Visy for microflute end uses that are not beverage packaging would be very substantial. Figure 4 below shows examples of the food trays supplied by Visy to McDonald's and Hungry Jack's.

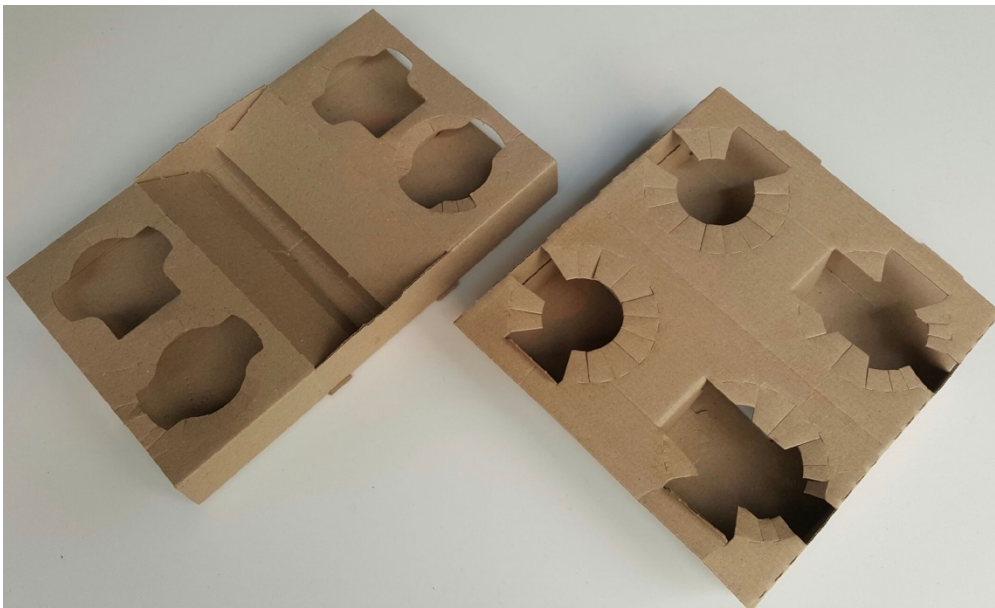


Figure 4 - food trays supplied by Visy to McDonald's and Hungry Jack's

34. GPI urges the ADC, as a matter of priority, to request that Visy fully disclose its (and that of any related entity) complete production and sale of microflute, including microflute used for end use applications other than beverage packaging. GPI submits that the ADC should consider Visy's injury claims taking all of Visy's microflute sales into account. GPI submits that Visy's injury claims are likely to be materially overstated by only taking into account a fraction of microflute sales (ie beverage multipacks).

³³ A common fast food application where microflute is used (and kraft paperboard is not used) is in pizza boxes. Kraft paperboard cannot compete with microflute in this application because of the substantially different physical characteristics, namely the greater rigidity and insulating properties of microflute.

³⁴ Gary A Smook, *Handbook for Pulp & Paper Technologists*, 3ed at page 351; Hye Jung Youn, Hyun Seung Kwon and Hak Lae Lee, *Evaluation Methods for Flat Crush Resistance of Corrugated Fiberboard with Microflutes*, in *J. of Korea TAPPI* 41(5) 2009 at page 8.

³⁵ See www.glamapak.com.au, accessed 9 May 2010.

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35. In addition, Visy is not the only producer of microflute in Australia. Orora, recently purchased by Nippon Paper, and now trading as Opal is a substantial producer of microflute packaging and a direct competitor with Visy in the Australian packaging market.³⁶ GPI estimates that, with Opal’s microflute production and Visy’s non-beverage microflute production, around three quarters of Australian microflute is used in end uses other than beverage packages.
36. The simple fact is that kraft paperboard that is wet strength treated is specifically designed for use in beverage packaging and so does not compete with microflute in these other applications.
37. Visy assumes its preferred answer to the important question of commercial likeness; that assumption is demonstrably wrong.
- c. Microflute is not functionally alike to kraft paperboard
38. GPI submits that microflute is not functionally alike to kraft paperboard.
39. Visy’s like goods argument is fixated on the *end use* of microflute and kraft paperboard as beverage packaging,³⁷ its application even endeavours to cast the Australian industry in terms of end use.³⁸ However for the reasons set out in section 2.b there are many applications where microflute and kraft paperboard have functionally different end uses.
40. But even in the relatively modest area of overlap in end uses for microflute and kraft paperboard, GPI submits that there are important functional differences. These differences stem from the substantial physical differences between microflute and kraft paperboard.

[Start confidential – non price reasons why Visy lost the large contract it claims was due to dumping]

41. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

³⁶ <https://www.afr.com/companies/manufacturing/orora-sells-fibre-business-to-nippon-paper-for-1-7b-20191010-p52zcc>.

³⁷ See for example the application at sections A-3-4 a), A-3-4 b); as the Manual states at section 2.3, end use or functional likeness will not of itself establish like goods.

³⁸ See the application at section A-3-9 and GPI’s discussion of Visy’s response to question A-3-9 at paragraphs 29 ff.

³⁹ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

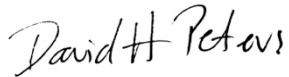
[REDACTED]

[REDACTED]

[End confidential – non price reasons why Visy lost the large contract it claims was due to dumping]

- 44. Microflute is demonstrably not a like good to kraft paperboard, on that basis GPI submits that the investigation should be terminated at the earliest possible juncture.
- 45. GPI is grateful for the opportunity to make a submission on the investigation. Please let me know if you need any further information or elaboration to the information provided in this submission.

Sincerely



**David Peters
Principal Lawyer
Kinsman Legal**