



## TRADE PRACTICES ACT 1974

### UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B

BY

**Australian Disc Brakes Pty Ltd (ACN 000 583 344) and  
Ampco Automotive Pty Ltd (ACN 003 095 467)**

#### PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Australian Disc Brakes Pty Ltd ("ADB") (ACN 000 583 344) and Ampco Automotive Pty Ltd ("Ampco") (ACN 003 095 467), both of 9-11 Jabez Street, Marrickville, in the State of NSW under section 87B of the *Trade Practices Act 1974* ("the Act").

#### BACKGROUND

2. Ampco carries on the business of, inter alia, the manufacture, importation and supply of disc brake pads.
3. ADB is a non-trading entity that leases machinery and equipment for a rental fee to Ampco.
4. Since at least 1998, Ampco and/or ADB have sold disc brake pads in packaging that contained one of the following symbols:
  - i) A kangaroo symbol of similar shape to the Australian Made symbol.
  - ii) A map of Australia symbol.

A copy of examples of the packaging is attached at **Annexure A**.

5. A number of the brake pads sold by Ampco and/or ADB in this packaging were imported and not made in Australia.
6. On 23 March 2001, the Australian Competition and Consumer Commission ("the Commission") wrote to Ampco and ADB alerting it to the Commission's position that the representations made by the symbols on the packaging referred to in paragraph 4 above were misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Act and constituted a false or misleading representation under section 53(eb) of the Act. The Commission stated that it was concerned that the symbols on the packaging would

have the effect of misleading consumers into believing that the disc brake pads were Australian Made when they were in fact imported.

7. In June 2001, Ampco and ADB changed their packaging to remove the symbols referred to in paragraph 4 above.
8. Ampco and ADB acknowledges the Commission's concerns that its packaging may have been in breach of sections 52 and 53(eb) of the *Trade Practices Act 1974*.
9. The Commission, Ampco and ADB have agreed to resolve this matter by the giving and acceptance of an undertaking in the terms contained herein.

#### **COMMENCEMENT OF UNDERTAKING**

10. This undertaking comes into effect when:
  - i) The Undertaking is executed by Ampco and ADB; and
  - ii) The Commission accepts the undertaking so executed.

#### **UNDERTAKINGS**

11. Ampco and ADB jointly and severally provide the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974* ("the Act").

#### **CONDUCT UNDERTAKINGS**

- i) Ampco and ADB will not advertise or package their products in such a way so as to mislead consumers into believing that their disc brake pads are Australian Made when they are in fact imported.
- ii) Ampco and ADB, their servants and agents will not make representations that their disc brake pads are Australian Made when they are in fact imported.

#### **CORRECTIVE ADVERTISING UNDERTAKINGS**

- iii) Ampco and ADB will, at their own expense, send a corrective notice ("the Corrective Notice") to all clients of Ampco and ADB for the past three (3) years from the date of this undertaking within ten (10) days of the acceptance of these undertakings by the Commission. The proposed form, design and content of the Corrective Notice is attached at **Annexure B**.
- iv) Ampco and ADB will, at their own expense, send stickers to each of the clients of Ampco and ADB for the previous three (3) years together with the

Corrective Notice. Such sticker shall be placed over each map of Australia or kangaroo symbol that appears on the packaging for Ampco and ADB standard disc brake pads and shall state the following:

*“Made in Taiwan under licence.”*

## **REFUNDS**

- v) Ampco and ADB will include in the Corrective Notice an offer of a full refund of the purchase price for the disc brake pads, in return for the brake pads, to all clients of Ampco and/or ADB for the previous three (3) years who upon grounds detailed in a statutory declaration reasonably satisfy Ampco and ADB that they were misled by the packaging of the disc brake pads that the disc brake pads were Australian Made and were bought on this basis
- vi) Ampco and ADB will provide the Commission with a list of all Customers to whom the Corrective Notice is sent, including the client’s telephone contact numbers, within two (2) weeks of the acceptance of these undertakings by the Commission.
- vii) Responses from clients to the Corrective Notice requesting a refund must be forwarded to Ampco and ADB within three (3) calendar months from the date at which the Corrective Notice being sent. (“the Closing Date”).
- viii) Ampco and ADB will forward copies of all responses from clients to the Corrective Notice to the Commission within seven (7) days of the Closing Date.
- ix) Ampco and ADB will provide the Commission with a report within fourteen (14) days of the Closing Date detailing the following:
  - The names of each customer who was paid a refund;
  - The value of each refund to each customer;
  - The total value of refunds given.

## **TRADE PRACTICES COMPLIANCE PROGRAM**

- x) Ampco and ADB will implement a trade practices compliance program (“the Compliance Program”) in accordance with **Annexure C**.

## **ACKNOWLEDGEMENTS**

12. Ampco and ADB acknowledge that the Commission will make this undertaking available for public inspection.
13. Ampco and ADB further acknowledge that the Commission will, from time to time, publicly refer to this undertaking.
14. Ampco and ADB acknowledge and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Ampco and ADB.
15. Ampco and ADB further acknowledge that the information referred to at Annexure C and the Compliance Program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of Ampco Automotive Pty Ltd by

**IN WITNESS of these undertakings:**  
**The COMMON SEAL of**  
Ampco Automotive Pty Ltd  
Was affixed hereunto by authority of  
The Board of Directors in the presence of:

)  
)  
)  
)



*[Handwritten signature]*  
.....  
Secretary/Director  
Name:

This *14th* day of *September* 2001

Signed on behalf of Australian Disc Brakes Pty Ltd by

**IN WITNESS of these undertakings:**  
**The COMMON SEAL of**  
Australian Disc Brakes Pty Ltd  
Was affixed hereunto by authority of  
The Board of Directors in the presence of:

)  
)  
)  
)



*[Handwritten signature]*  
.....  
Secretary/Director  
Name:

This *14th* day of *September* 2001.

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

.....  
Professor Allan Fels  
Chairman

This            day of            2001.

SYDNEY AUSTRALIA  
AUSTRALIAN  
DISC BRAKES

ANNEXURE A

DB427 STD

PART NUMBER

STANDARD  
DISC BRAKE PADS



# STANDARD BRAKE PADS

- Smooth Braking
- No Abnormal Disc Wear
- Responsive Hot or Cold
- High Heat Resistant
- Noise-Less

AUSTRALIAN  
DISC BRAKES



Tel : 61-2-9518 1888 Fax : 61-2-9518 1111

## ANNEXURE A

**WARNING**  
Keep dust down by following basic safety rules:  
A tiny portion of the dust found in used brake & clutch parts will be free asbestos fibre. This is unlikely to be a health risk, but you are advised to use a damp cloth to remove it when servicing brake or clutch mechanisms and/or relining your car brakes.  
Do NOT use an airline or brush to remove dust from brake drums.



# BRAKE PADS

AUSTRALIAN  
DISC BRAKES



Tel - 61-2-9518 1888 Fax 61-2-9518 1111



**STANDARD**  
DISC BRAKE PADS  
PART NUMBER



# STANDARD

- Smooth Braking
- No Abnormal Disc Wear
- Responsive Hot or Cold
- High Heat Resistant
- Noise-Less

## ANNEXURE B

### NOTICE FROM AMPCO AUTOMOTIVE PTY LTD

&

### AUSTRALIAN DISC BRAKES PTY LTD

The Australian Competition & Consumer Commission ("the Commission") has raised concerns with Ampco Automotive Pty Ltd ("Ampco") and Australian Disc Brakes Pty Ltd ("ADB") concerning the packaging of its standard disc brakes. The Commission is of the view that the packaging may have made misleading representations concerning the country of origin of the standard disc brake pads in breach of sections 52 and 53(eb) of the *Trade Practices Act 1974* (Cth).

The Commission is concerned that certain features of the standard brake pad packaging (particularly a black and white rectangle containing the map of Australia or a kangaroo symbol and the words "Australian Disc Brakes") may have misled those customers who purchased our standard disc brake pads on the understanding that they continued to be made in Australia. Ampco and ADB acknowledges the Commission's concern that the packaging was likely to mislead consumers that the brake pads were made in Australia when they were not, in breach of the *Trade Practices Act 1974* (Cth).

Since January 2001, all our standard disc brake pads have been made in Taiwan under licence. Prior to this, selected models of standard disc brake pads were manufactured in Australia, while others were manufactured in Taiwan. For further details as to which standard disc brake pads were imported from Taiwan and which were made in Australia, please contact Mr John Nemanic of Ampco and ADB on the numbers below.

Should you have purchased from Ampco and/or ADB any standard disc brake pads on the misunderstanding that they continued to be made in Australia and wish to obtain a refund because of this reason, you may apply for a full refund for any standard disc brake pads made by Ampco or ADB which you have in stock. Should you wish to obtain a refund, you will need to return all unsold stock together with a copy of all relevant invoices evidencing the purchase of that stock from Ampco or ADB and provide a statutory declaration that you believed on reasonable grounds the stock was made in Australia and was purchased on this basis. All copies of refund requests will subsequently be forward to the Commission.

Ampco and ADB have undertaken to the Commission to amend the country of origin labelling on the packaging of standard disc brake pads. Since June 2001, all standard disc brake pads packaging from ADB show the following words:

*"Made in Taiwan under licence."*

Ampco and ADB have also undertaken to the Commission to provide customers with stickers containing this amended wording. Customers are therefore provided with [*insert number of stickers*] stickers with this Notice and are requested to please affix these stickers on the packaging of all remaining stock of standard disc brake pads containing a black and white rectangle with a map of Australia or kangaroo symbol. Please note the stickers must be affixed so as to cover the map of Australia or kangaroo symbol.



Should you have any queries or questions about this matter, or would like to obtain a refund, please contact Mr John Nemanic of Ampco Automotive Pty Ltd and Australian Disc Brakes Pty Ltd on (02) 9572 8888 or (02) 9572 9999.

## **ANNEXURE C**

### ***Trade Practices Compliance Program***

The Trade Practices Compliance Program ("the Program") to be undertaken by Ampco and ADB will be implemented as follows:

#### **General**

- 1) Within sixty (60) days of the acceptance of this undertaking by the Commission, Ampco and ADB will develop for consideration by the Commission a trade practices compliance program ("the Draft Program").
- 2) Ampco and ADB will make whatever changes to the Draft Program that the Commission may reasonably require.
- 3) Once the Commission has approved the Program, Ampco and ADB will, within thirty (30) days of receipt of the Commission's approval, implement the Program at its own expense.
- 4) Ampco and ADB will place responsibility for the implementation and effectiveness of the Program with its Managing Director, who will also be the Trade Practices Compliance Officer.

#### **Packaging Reviews**

- 5) Ampco and ADB will require the Compliance Officer to review all packaging (including current packaging) ("Packaging Review") of Ampco and ADB to ensure that it complies with section 52 and 53(eb) of the *Trade Practices Act* 1974. Without limiting the scope of the Packaging Review, it will address:
  - i) Whether representations contained on the packaging, including country of origin representations, are able to be substantiated.
  - ii) Whether any representations contained on the packaging are likely to mislead or deceive consumers.
  - iii) Whether the representations made on the packaging require qualification, and if so, whether the advertisement provides the information necessary to qualify the representation. Such qualification should be of a size and prominence to effectively qualify any representation.
- 6) Ampco and ADB will require the Compliance Officer to maintain a documentary record of the Packaging Reviews. Such a documentary record will include:
  - i) A copy of the packaging;
  - ii) Written advice that the packaging had been reviewed and cleared by the Compliance Officer (including the date on which the packaging was reviewed); and
- 7) Ampco and ADB will ensure that the documentary records of the Packaging Reviews are to be available to the Commission to be reviewed from time to time. Such records for current packaging are to be available from one (1) month after the implementation of this

program for a period of two (2) years after that date. Such records for any future packaging are to be available from one (1) week after implementation of that packaging for a period of two (2) years after that date. Such records shall be provided to the Commission within ten (10) working days of a written request for those records.

### **Complaints Handling**

- 8) Ampco and ADB will ensure that the Program incorporates an appropriate complaints handling mechanism.

### **Education**

- 9) Ampco and ADB will develop and implement an education program aimed at ensuring that relevant staff are conversant with sections 52 and 53(eb) of Part V of the Act to a level where:
- i) Relevant staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the Compliance Officer;
  - ii) The Compliance Officer can carry out their responsibilities; and
  - iii) The Compliance Officer can address more complex trade practices issues or, if not legally qualified or able to give the relevant advice, identify issues which require referral to Ampco or ADB's legal adviser.
- 10) The term "relevant staff" referred to in (13) above relates to all:
- Senior Management of Ampco and ADB
  - Staff involved in the preparation or approval of advertising marketing material or packaging material; and
  - Sales and Marketing staff.
- 11) Ampco and ADB will ensure that training sessions covering all aspects of sections 52, 53(eb) and sections 65AA – 65AN of the *Trade Practices Act* be given to relevant staff on two occasions within twelve months after the implementation of the Program. The first of these training session is to be completed within 3 months of the Program being implemented and the remaining one between 8 and 9 months later. Ampco and ADB will also produce Trade Practices Act Compliance Manual covering all aspects of sections 52, 53(eb) and sections 65AA-65AN of the Trade Practices Act to be given to relevant staff within three (3) calender months after the implementation of this Program

### **Review**

- 12) Between eleven (11) and twelve (12) months after the implementation of this Program, Ampco and ADB will provide a copy of the Program to the Commission. Within one (1) calender month of the Program being provided to it, the Commission will audit the program to identify deficiencies in the program. The Commission will make recommendations as to possible improvements to the Program. Ampco and ADB will make changes to the Program as reasonably requested by the Commission and such changes are to be made within two (2) weeks of the Commission's request.

### **Reporting**

- 13) Ampco and ADB will provide the Commission with the following:

- i) within 10 working days of the implementation of the Program, a copy of the Program;
- ii) within 10 working days after each of the training sessions, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and

14) Ampco and ADB will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 13 above. Such changes are to be implemented within two (2) weeks of the Commission's request.

**Duration**

15) The Program will remain in effect for two (2) years following the undertaking coming into effect.