

TRADE PRACTICES ACT 1974

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

BY

AC McGRATH & CO PTY LTD (ACN 000 132 427)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by AC McGrath & Co Pty Ltd (ACN 000 132 427) of 409 – 421 Hume Highway, Liverpool, in the State of NSW under section 87B of the *Trade Practices Act* ('the Act').

BACKGROUND

2. AC McGrath is a NSW based motor vehicle dealer with a number of dealerships in the Sydney metropolitan area, include a Mazda Dealership, located at 365 Hume Highway, Liverpool in the State of NSW ("Mazda Dealership") and a Subaru Dealership, located at 365 Hume Highway, Liverpool in the State of NSW ("Subaru Dealership").
3. From time to time, AC McGrath has published advertising material about motor vehicles for sale through AC McGrath dealerships.
4. In May 2000, AC McGrath caused to be placed an advertisement for Mazda Motor Vehicles ('the Mazda Advertisement') and an advertisement for Subaru motor vehicles ('the Subaru Advertisement') on page 97 of *The Daily Telegraph* on Saturday, May 20th, 2000. A copy of the advertisement of May 20th, 2000 is attached at **Annexure A**.

5. The Mazda Advertisement featured a photograph of a Mazda Bravo B2600 at a price of \$17,990 and contained the following representation:

“PRE-GST-SALE

Unbeatable Deals on New Mazda

6. The Subaru Advertisement featured a photograph of a Subaru Liberty sedan and contained the following representation:

“BEAT JULY

PRICE RISES!”

7. On 24 May 2000, the Commission wrote to AC McGrath alerting it to the Commission’s position that the representations in the Advertisements was misleading or deceptive or likely to mislead or deceive contrary to section 52 of the Act and may have constituted a false or misleading representation under section 53(e) of the Act. The Commission stated that it was concerned that the Advertisement would have the effect of misleading consumers into believing that the price of new motor vehicles will increase due to the introduction of the GST on 1 July 2000.
8. The Commission sought undertakings from AC McGrath that it would cease further publication of the Mazda Advertisement and Subaru Advertisement.
9. On 26 May 2000, AC McGrath provided written undertakings not to republish the Advertisements without first obtaining agreement with the Commission on such republishing.
10. On 1 June 2000, AC McGrath advised that:
- it believed that the price of the Mazda Bravo B2600 will be more on 1 July 2000 than the advertised price of \$17, 990;
 - it understood the Commission’s concerns about the Subaru Advertisement; and

- it had contacted 6 purchasers of Subaru motor vehicles to enquire as to whether they had been misled by the Subaru Advertisement and ask whether they wished to proceed with their purchase.
11. AC McGrath ran a corrective advertisement at its own expense on page 88 of the Daily Telegraph on 24 June 2000 in a form, design and content approved by the Commission. A copy of the Corrective Advertisement is at **Annexure B**.
12. The Commission and AC McGrath have agreed to resolve this matter by the giving and acceptance of an undertaking in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

13. This undertaking comes into effect when:
- the undertaking is executed by AC McGrath; and
 - the Commission accepts the undertaking so executed.

UNDERTAKINGS

13. AC McGrath gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*.

CONDUCT UNDERTAKINGS

- (i) AC McGrath, its agents and employees at the Mazda Dealership and the Subaru Dealership, will cease to make representation that retail prices for Subaru motor vehicles will rise in July.
- (ii) AC McGrath, its agents and employees at the Mazda Dealership and the Subaru Dealership will cease to make representations of pre-GST sales without specifying the particular vehicles to which the representation refers and explaining the reasonable basis for making this representation.

- (iii) AC McGrath will cease and refrain from causing to be published any representation which states or implies that the prices of new Subaru motor vehicles will increase on and after 1 July 2000 as a result of the GST.

REFUNDS

- (v) AC McGrath will offer a full refund or right of rescission to all consumers who advise AC McGrath that they were misled by the Advertisement into acquiring a new Subaru motor vehicle from the AC McGrath Subaru Dealership .

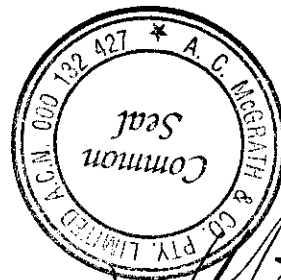
TRADE PRACTICES COMPLIANCE PROGRAM

- (vi) AC McGrath will implement a trade practices compliance program ('the Program') in accordance with **Annexure C**.

ACKNOWLEDGEMENTS

14. AC McGrath acknowledges that the Commission will make this undertaking available for public inspection.
15. AC McGrath further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
16. AC McGrath acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of AC McGrath company
17. AC McGrath further acknowledges that the information referred to at **Annexure B** 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 AC McGrath by



[Handwritten signature]

IN WITNESS of these undertakings:

**The COMMON SEAL of
AC McGrath**

was affixed hereunto by authority of
the Board of Directors in the presence of:

H. R. McGrath

Secretary/Director
Name (Printed):

This *16th* day of *July* 2000

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

[Handwritten signature]

Professor Allan Fels
Chairman

This *2nd* day of *July* 2000

GRAND OPENING SALE *Continues*



Mazda

PRE-GST-SALE!

★ Unbeatable Deals On New Mazda ★

Mazda Bravo
B2600



\$12 10 Only

\$17,999
Drive Away

- Tray Included
- Power Steering
- 3 Yr. 100,000km Warranty

"The Best In Its Class For Interior & Cabin Storage"
The Best For Less!!

No More To Pay

HUGE RE-LOCATION STOCK CLEARANCE



- 121..... 1x 121 Metro Shades - 1.5 Manual
1x 121 Metro Shades - 1.5 Automatic
- TO CLEAR AT COST!**
- 323..... 1x 323 Protegé Shades - 1.6 Manual
1x 323 Protegé Shades - 1.8 Manual
1x 323 Astina Shades - 1.8 Automatic
- TO CLEAR AT COST!**
- 626..... 1x 626 Classic Wagon - Automatic
- TO CLEAR AT COST!**
- E-Series... 1x E-Series SWB - Van
- TO CLEAR AT COST!**

Ring Our Hotline NOW
For A Super "HOT" Clearance Price

McGrath Mazda

Get The Most From Mazda At McGrath Mazda
Ph: 9600 5555 Fax: 9600 5577
365 Hume Highway - CNR Christie St - Liverpool



SUBARU

ALL-WHEEL DRIVE

SUBARU NEW VEHICLES
AVAILABLE FOR IMMEDIATE DELIVERY

STRICTLY LIMITED OFFER

THE FAST & EASY WAY TO FINANCE YOUR WRX AT ONLY 4.99%



(Subaru WRX Shown)

IMPREZA

- Impreza WRX Sedan EVO4 SSP Manual 2.0L Kashmir Yellow **LAST ONE!**S0312
Impreza WRX AWD Sedan 5SP Manual 2.0L Dark BlueS0338
Impreza WRX AWD Hatch 5SP Manual 2.0L WRC BlueS0374
Impreza RX AWD Sedan 5SP Manual 2.0L Black Mica **RARE! BE QUICK**S0406



- Liberty Heritage AWD Wagon Automatic 2.5L Royal SilverS0392
Liberty RX AWD Sedan Automatic 2.5L Royal VioletS0391



- Forester GT AWD Wagon 2.0L Manual Green MetallicS0361
Forester LIMITED AWD Wagon 2.0L Automatic Pure WhiteS0386
Forester LIMITED AWD Wagon Automatic 2.0L Red MicaS0383
Forester GX AWD Wagon Automatic 2.0L Red MicaS0407



- Outback LIMITED AWD Wagon 2.5L Manual Violet Blue MicaS0408
Outback GX AWD Wagon 2.5L Automatic Dark Green MicaS0311
Outback GX AWD Wagon 2.5L Automatic Pure WhiteS0100

BEST JULY PRICE INCREASES!
1999 NRMA/RACV BEST MID SIZE CAR

CALL US NOW!
1999 RACQ BEST RECREATIONAL VEHICLE

LIMITED STOCK HURRY FOR THE BEST CHOICE!

McGrath Subaru

WHERE THERE'S ALWAYS A GREAT DEAL FOR YOU
PH: 9600 5555 FAX: 9600 5577
365 HUME HIGHWAY - CNR CHRISTIE ST - LIVERPOOL
Website! www.acmcgrath.com.au

Appendix B

Announcement By A.C. McGrath & Co Pty Ltd

An advertisement for the Subaru & Mazda divisions of A.C. McGrath & Co. Pty. Ltd. which appeared on page 97 of the Daily Telegraph on 20 May, 2000, may have been construed as misleading. This advertisement stated that customers could "Beat July Price Increases" on new Subaru motor vehicles and also stated - "Pre-GST Sale. Unbeatable Deals on New Mazda".

As it is expected that the retail prices of new Subaru motor vehicles are likely to decrease in July, 2000, A.C. McGrath will be offering any customers who feel they were misled by the Subaru advertisement to purchase a new Subaru from A.C. McGrath, a full refund or right to rescind their contract. Also, by way of clarification, the 'PRE GST SALE Unbeatable Deals on New Mazda' offer only applied to the Mazda Bravo B2600 featured.

This corrective advertisement has been published at the request of the Australian Competition and Consumer Commission.

MLV0574/102

Corrective advertisement which appeared on page 88 of the Daily Telegraph, 24 June 2000.

Annexure C

Trade Practices Compliance Program

The Trade Practices Compliance Program (“the Program”) to be undertaken by AC McGrath will be implemented as follows:

General

- 1) AC McGrath will, within one (1) month of receipt of the Commission’s acceptance of the undertaking implement the following Program at its Subaru Dealership and Mazda Dealership (“the AC McGrath Dealerships) at its own expense.
- 2) AC McGrath will place responsibility for the implementation and effectiveness of the Program with its Director.
- 3) AC McGrath will appoint a senior officer as the Trade Practices Compliance Officer (“the Compliance Officer”). The Compliance Officer will be appointed at the time the Program is implemented.
- 4) The Compliance Officer has a right to nominate another senior officer of AC McGrath to undertake his duties when absent from his employment.

Advertising Reviews

- 5) AC McGrath will require the Compliance Officer to review all advertising (“Advertising Review”) of the AC McGrath Dealerships (by any medium) to ensure that it complies with the *Trade Practices Act 1974*, prior to its publication or broadcast. Without limiting the scope of the Advertising Review, it will address:
 - i) Whether representations contained in the advertisements are able to be substantiated;
 - ii) Whether representations contained in the advertisements are likely to mislead or deceive consumers;
 - iii) Whether representations as to future matter, is made on reasonable grounds; and
 - iv) Whether the representations made in the advertisement 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) AC McGrath will require the Compliance Officer to maintain a documentary record of the Advertising Reviews. Such documentary record will include:
 - i) a copy of the advertisement;
 - ii) a description of the publication (including name, date, page(s) and publisher);

- iii) written advice that the advertisement had been reviewed and cleared by the Compliance Officer (including the date on which the advertisement was reviewed); and
 - iv) written advice of any possible contraventions of the Trade Practices Act that were identified by the Compliance Officer and the action taken to address these possible contraventions.
- 7) AC McGrath will ensure that the documentary records of the Compliance Reviews are available to the Australian Competition and Consumer Commission (“the Commission”) to be reviewed from time to time. Such records are to be available from one week after the date of publication of the advertisement for a period of 3 years after that date. Such records shall be provided to the Commission within 5 working days of a written request for those records.

Complaints Handling

- 8) AC McGrath will ensure that the Program incorporates an appropriate complaints handling mechanism at the AC McGrath Dealerships.

Education

- 9) AC McGrath will develop and implement an education program calculated to ensure that sales and marketing staff of the AC McGrath Dealerships are conversant with the Part V provisions of the Act to a level where:
- i) they 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 AC McGrath’s legal adviser.
- 10) AC McGrath will ensure that training sessions covering all aspects of Part V on the Trade Practices Act be given to sales and marketing staff of the AC McGrath Dealerships on two occasions within the twelve months after the implementation of the Program. The first of these training sessions is to be completed within 3 months of the Program being implemented and the remaining one between 8 and 9 months later.

Review

- 11) AC McGrath will ensure that an independent external auditor, including a Quality Assurance Professional with expertise in trade practices law, conducts an audit (“the Audit”) of the Program with a view to improving its effectiveness. The Audit will be conducted between 11 and 12 months after the implementation of the Program. The Audit will identify deficiencies and make recommendations as to possible improvements to the Program.

Reporting

12) AC McGrath will provide the Commission with the following:

- i) Within 10 working days of the implementation of the Program, notice of the appointment of the Compliance Officer including name, position and contact details;
- ii) Within 10 working days after each of the training sessions to be conducted at the of the AC McGrath Dealerships, notice of completion of that seminar including an outline of the session, details of the presenter(s) and details of attendees; and
- iii) Within 10 working days of the completion of the Audit, a copy of the Audit together with advice as to what changes AC McGrath intends to incorporate in the Program as a result of the Audit.

13) AC McGrath will make changes to the Program as reasonably requested by the Commission having considered the documentation referred to at paragraph 11 (iii) above. Such changes are to be implemented within 2 weeks of the Commission's request.

Duration

14) The Program will remain in effect for ^{two}~~three~~ years following the undertaking coming into effect. 