

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER  
COMMISSION GIVEN PURSUANT TO SECTION 87B OF THE TRADE  
PRACTICES ACT 1974**

**BY**

**BOB JANE T-MARTS PTY. LTD. (ACN 005 870 431)**

**BACKGROUND**

- (1) Bob Jane T-Marts Pty. Ltd. ("Bob Jane") is a company incorporated in the state of Victoria and has its registered office at 155 Roden Street, West Melbourne in the said State.
- (2) Bob Jane conducts the business of retailer of car tyres, wheels and batteries and franchisor of these services. Bob Jane's business is conducted throughout Australia via company and franchisee owned stores. Services provided by Bob Jane to consumers include wheel alignment and wheel balancing.
- (3) On 14 June 2000 the Australian Competition and Consumer Commission ("the Commission") received a complaint in connection with the wheel alignment services offered to a consumer by a Bob Jane outlet in Geelong. The complainant alleged staff at this Bob Jane outlet represented that for \$45 a thrust wheel alignment could be purchased (a procedure whereby the front wheels of the car are aligned by reference to thrust line of the car) and that for \$29 a front two wheel alignment could be purchased (an alignment procedure referencing the front wheels only and not the thrust line of the car). The complainant alleged there was no qualitative difference between these two wheel alignment services offered.
- (4) On 5 July 2000 the ACCC wrote to Bob Jane seeking its comments in respect of the above complaint and pointing out that if the allegation was correct Bob Jane may be at risk of having contravened sections 52, 53 and 55A of the Trade Practices Act 1974 ("the Act").
- (5) Bob Jane has confirmed that at 11 Bob Jane outlets, consumers may have paid a higher price for a thrust wheel alignment when, having regard to the particular equipment used (Balco 3D machine) by these Bob Jane outlets, a cheaper front two wheel alignment would achieve the same result. Accordingly, some consumers have purchased wheel alignment services from these Bob Jane outlets in the mistaken belief that the front two wheel alignment and thrust wheel alignment were a different service when in fact purchase of the cheaper wheel alignment would result in the same alignment offered with the purchase of the more expensive service.

- (6) After assessing the information provided by Bob Jane the Commission is of the view that the relevant Bob Jane outlets may have contravened the following sections of the Act:
- Section 52 which prohibits a corporation from engaging in misleading or deceptive conduct or conduct that is likely to mislead or deceive;
  - Section 53 (aa) which prohibits a corporation from falsely representing that services are of a particular standard, quality, value or grade;
  - Section 53 (c) which prohibits a corporation from representing that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits it does not have; and
  - Section 55A which prohibits a corporation from engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.
- (7) Bob Jane acknowledges that the relevant Bob Jane outlets may have engaged in conduct that contravened sections 52, 53 (aa), 53 (c) and 55A of the Act. Upon having the Commission's concerns drawn to its attention Bob Jane undertook the following action:
- Bob Jane instructed the 11 relevant outlets to alter their advertising boards and remove any reference to front two wheel alignments;
  - Bob Jane advised all franchised outlets what had occurred in relation to the 11 relevant outlets and instructed the requisite action to be taken should any outlet subsequently purchase a Balco 3D machine;
  - Bob Jane conducted a review of all current and proposed advertising and other material (including its Retail Merchandising Guidelines) published or used in the course of its business and where necessary amended and/or discontinued such material. Relevant instruction was also given to its Advertising and Marketing Department in that regard; and
  - Bob Jane commenced a program of sending a free wheel alignment voucher to relevant customers that it was able to identify as potentially being misled by its conduct.
- (8) To address the Commission's concern that Bob Jane is unable to identify numerous consumers who may have been affected by Bob Jane's conduct, Bob Jane has offered the Commission this Undertaking in accordance with section 87B of the Act.

## COMMENCEMENT OF UNDERTAKING

- (9) This Undertaking comes into effect when:
- (i) the Undertaking is executed by Bob Jane; and
  - (ii) the Commission accepts the Undertaking so executed.

## UNDERTAKING

- (10) Bob Jane hereby gives the following undertakings for the purposes of section 87B of the Act:
- (i) that it will not, and will use its best endeavours to ensure that its franchised outlets will not, in trade or commerce:
    - make representations about the price of a Front 2 Wheels Alignment and a Thrust Wheel Alignment and the qualitative differences between these two services that are misleading or deceptive or likely to mislead or deceive;
    - make false representations about the qualitative differences between a Front 2 Wheels Alignment and a Thrust Wheel Alignment;
    - represent that there is a qualitative difference between a Front 2 Wheels Alignment and a Thrust Alignment where there is no qualitative difference between the two services; and
    - engage in conduct that is liable to mislead the public as to the qualitative differences between a Front 2 Wheels Alignment and a Thrust Wheel Alignment.
  - (ii) that it will cause to be published within two weeks of the acceptance of this Undertaking:
    - a Public Notice in the terms of Schedule 1 to this Undertaking (“the Public Notice”) to appear not later than page six in newspapers over two consecutive weeks in the States where the relevant Bob Jane outlets operate, namely: *The Daily Telegraph* in Sydney, *The Herald Sun* and *The Age* in Melbourne, *The Brisbane Courier Mail* in Brisbane and *The West Australian* in Perth;
    - the Public Notice in one (1) local newspaper for each region in which the relevant Bob Jane outlets operate; and
    - the Public Notice in a prominent position in the Services section of the Bob Jane web page whose address is [www.bobjane.com.au](http://www.bobjane.com.au). The Public Notice shall remain displayed on Bob Jane’s web page for a period of six weeks

- (iii) within two weeks of the acceptance of this Undertaking the Public Notice shall be placed in a prominent position at the point of sale in each of the relevant Bob Jane outlets and shall remain so displayed for a period of six weeks thereafter.
- (iv) it will compensate affected consumers in the terms provided for in the Public Notice referred to in Schedule 1 to this Undertaking.
- (v) at its own expense, commission an audit by Corrs Chambers Westgarth, being a suitably qualified person(s) having trade practices experience, to report with regard to the following matters:
  - the publication and/or placement of the Public Notice referred to in Paragraph 10 (ii)-(iii) above;
  - the corrective procedures, action taken and changes to Bob Jane's practice which are described in paragraph 7 of this Undertaking;
  - Bob Jane's trade practices compliance program to identify whether the program demonstrates a commitment to and achieves a level of compliance in accordance with the provisions of Australian Standard AS 3806-1998 *Compliance Programs*. Full details shall be provided of any deficiencies identified with the program and the action proposed to redress these deficiencies;
  - The number of persons who contact Bob Jane in relation to taking up the offer provided in the Public Notice and those consumers identified in paragraph 7 of this Undertaking, the number of claims disallowed by Bob Jane and a summary of reasons disallowing such claims.

Bob Jane shall cause two reports to be given to the Commission in respect of the above matters. The first report shall be provided to the Commission within one month after the acceptance of this Undertaking and to the extent possible shall report on all of the above matters. The second report shall be provided to the Commission within two weeks after the expiration of the six week period allowed for consumers to lodge their claims for a free wheel alignment service referred to in the Public Notice. This second report must cover all the above matters not previously addressed in the first report and also advise of any circumstances which may cause the first report to be incorrect or otherwise require amendment.

## ACKNOWLEDGMENTS

1. Bob Jane acknowledges the Commission's right to make this undertaking available for public inspection and notes that the Commission will, at its discretion, from time to time, publish and publicly refer to this undertaking.

2. Bob Jane acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from Bob Jane's alleged conduct.

**IN WITNESS TO THESE UNDERTAKINGS**

The Common Seal of BOB JANE T-MARTS PTY LTD (ACN 005 870 431) was hereunto affixed by authority of its Board of Directors and in accordance with its Articles of Association in the presence of:

Director: [Signature]

~~Director~~ / Secretary: [Signature]

This 5 day of November 2000.  
December



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

Chairman: [Signature]

This 14 day of December 2000.

## Public Notice

### **An apology and offer to the valued customers of Bob Jane T-Marts**

Bob Jane T-Marts apologises to any of its customers who may have been misled by the offer and pricing of wheel alignment services by the following Bob Jane T-Marts stores when customers purchased a Thrust Wheel Alignment during the following periods:

*[insert one of the following]*

- (a) [insert Victorian stores]- during the period from approximately September 1996 to 21 July 2000.
- (b) [insert New South Wales store]- during the period from approximately June 1998 to 21 July 2000.
- (c) [insert Queensland store No 1]- during the period from approximately March 1996 to 30 June 1999.
- (d) [insert Queensland stores No.'s 2 and 3]- during the period from approximately February 1997 to 21 July 2000.
- (e) [insert West Australian store]- during the period from approximately October 1997 to 21 July 2000.

The wheel alignment equipment used at these stores does not distinguish in its functional operation between a Front 2 Wheel Alignment and a Thrust Wheel Alignment and could only perform the Thrust Wheel Alignment.

The cost of a Thrust Wheel Alignment is more expensive than a Front 2 Wheel Alignment because a Thrust Wheel Alignment provides a more accurate alignment.

As the wheel alignment equipment used at these stores did not distinguish between the two services, it is possible some consumers purchased a Thrust Wheel Alignment from the above store(s) during the relevant period when they could have paid for a cheaper Front 2 Wheel Alignment and still received a Thrust Wheel Alignment.

Bob Jane T-Marts acknowledge that the above stores should not have represented to consumers that the wheel alignment equipment performed these different alignment functions for which a different price was payable.

Bob Jane T-Marts sincerely regrets any inconvenience the above circumstances may have caused to its valued customers and is offering those affected a free Thrust Wheel Alignment at the store where the initial alignment service was provided.

Bob Jane T-Marts has already sent a free voucher to all customers of the relevant stores who were affected by the above situation and who Bob Jane T-Marts is able to identify from its records.

If you have not already received a voucher from Bob Jane T-Marts and you were affected by the situation described above, you should present this advertisement at the

relevant store along with proof of purchase of the initial alignment service at any time within 6 weeks following the date of this advertisement to receive your free Thrust Wheel Alignment service.

Bob Jane T-Marts would again like to apologise for any inconvenience you may have suffered as a result of this situation and assure you that your custom is highly valued by Bob Jane T-Marts.

Should consumers have any enquiries in respect of this matter they may contact Bob Jane T-Marts on ...[phone and address details to be inserted]

Insert ACCC logo

Insert Bob Jane T-Marts logo

This Public Notice has been placed at the request of the Australian Competition and Consumer Commission and has been paid for by Bob Jane T-Marts.

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### **Requirements**

Heading 'Public Notice' should be white text on a black background, font to be at least 14 point.

The copy is to black writing on a white background

Dimensions 8.5 cm (W) by 15 cm (L)

Justified type- right and left

Headlines: Upper and lower case and in bold, no full stop after headline

Headline font size: 20 points

Copy font: not less than 10 points

Typeface: Sans Serif

The public notice to appear not later than page 6 of the relevant newspaper