



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

BY

**SCHWARZE INDUSTRIES AUSTRALIA PTY LTD
ACN 089 416 937**

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Schwarze Industries Australia Pty Ltd ACN 089 416 937 ("Schwarze") of 31 Antimony Street, Carole Park in the State of Queensland, under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

2. Schwarze sells throughout Australia a range of road sweepers including its A6500XL and A5500 models. The purchasers of these road sweepers are predominantly local government authorities but other commercial entities use the vehicles for cleaning facilities or to contract sweep local government and industrial sites.
3. In promotional material:
 - a) originated in February 2001 and attached to submissions by Schwarze in response to tender requests from many local government authorities throughout Australia until February 2002; and
 - b) originated in February 2001 and appearing on Schwarze's website from 22 August 2002 until 29 January 2003

Schwarze represented, in relation to its A6500XL and A5500 models:

"The "All Australian" range of Schwarze sweepers are manufactured in their entirety at the company's Brisbane plant and incorporate over 80% Australian Content".

4. In documentation attached to a submission by Schwarze dated 1st August 2001 in response to a tender request from a local government authority, Schwarze represented, in relation to the A6500XL:

"The Australian content of the complete machine is 73%".

5. In documentation attached to a submission by Schwarze dated October 2001 in response to a tender request from a local government authority, Schwarze represented, in relation to the A6500XL:

"Our Australian content of 72% is true Australian Content".

6. In documentation attached to a submission by Schwarze dated October 2001 in response to a tender request from a local government authority, Schwarze represented, in relation to the A6500XL:

“The Isuzu cab chassis is imported from Japan and is the only substantial item not Australian made”.

7. The Commission received a complaint raising concerns about the claims referred to in paragraphs 3, 4, 5 and 6.
8. The Commission considers that in relation to the representations contained in paragraphs 3, 4, and 5, the percentage of Australian Content quoted is inaccurate and has been overstated, having regard to all of the sources of the components utilised by Schwarze in the production of the road sweepers.
9. The Commission considers that the representation contained in paragraph 6 is misleading as some substantial components other than the Isuzu cab chassis, including the turbo engine for the air system, are also sourced from overseas.
10. Schwarze acknowledges that its conduct in producing and distributing the materials has contravened ss. 52, 53(a), 53(eb) and 55 of the Act.
11. Schwarze has requested that the Commission accept, pursuant to section 87B of the Act, the following undertakings from Schwarze in connection with the matter.

UNDERTAKINGS

12. In consequence of the matters referred to above, Schwarze undertakes to the Commission, pursuant to section 87B of the Act, that Schwarze:
 - A. as of the date of acceptance by the Commission of this undertaking (“the acceptance date”), has ceased to distribute or publish the material referred to in paragraphs 3, 4, 5 and 6; and will not further distribute or publish that material;
 - B. will not make representations (including by way of advertising) concerning its products, that make reference to the origin of those products or the level of Australian content therein unless it has conducted all necessary inquiries and calculations to establish the accuracy of those representations and the representation (or the advertisement containing the representation) sets out all material facts supporting the representation;
 - C. will within 60 days of the acceptance date and on the first, second and third anniversaries of the acceptance date require the National Sales and Marketing Manager to complete a review of all promotional material used in the preceding 12 months, including that attached to responses to tender documents (a “Promotional Material Review”) to ensure that it complies with sections 52, 53(a), 53(eb) and 55 of the Act. Without limiting the scope of a Promotional Material Review, it will address:
 - i) whether representations contained in the promotional material, including country of origin representations, are able to be substantiated, including in accordance with undertaking B;
 - ii) whether any representations contained in the promotional material are likely to mislead or deceive customers; and
 - iii) whether the representations made in the promotional material require qualification, and if so, whether the promotional material provides the information necessary to qualify the representation and whether such qualification is of a size and prominence to effectively qualify that representation;

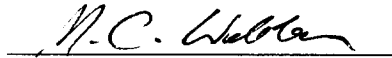
- D. will require the National Sales and Marketing Manager to maintain a documentary record of each Promotional Material Review. Such a documentary record will include:
- i) a copy of the promotional material; and
 - ii) written confirmation that the promotional material had been reviewed and cleared or otherwise by the National Sales and Marketing Manager (including the date on which the promotional material was reviewed);
- E. will ensure that the documentary records of each Promotional Material Review are available from one (1) month after each review and retained for a period of four (4) years from the acceptance date. Such records shall be provided to the Commission, without charge, within ten (10) working days of a written request for those records;
- F. will at its own expense and within 60 days of the acceptance date circulate a corrective notice in the form that is annexure “A” hereto to all persons, organisations or local government authorities who either:-
- (i) purchased a Schwarze A6500XL or A5500; or
 - (ii) to the best of Schwarze’s knowledge received a submission from it in response to a request for tender in which Schwarze offered for sale the Schwarze A6500XL or A5500
- between February 2001 and February 2002.
- G. will at its own expense and within 6 months of the date of this undertaking ensure that the relevant staff attend a Trade Practices Compliance Seminar (“the Seminar”), conducted by a person chosen from a panel nominated by the Australian Compliance Institute. The Seminar will consist of presentations relating to Part V of the Act. The term “relevant staff” means:
- The National Sales and Marketing Manager;
 - The General Manager;
 - All staff involved in the drafting or approval of promotional material; and
 - All sales and marketing staff.

ACKNOWLEDGEMENTS

13. Schwarze acknowledges and accepts:
- A. the Commission’s right to make this undertaking available to the public, including by placing it on a public register, publishing it and allowing third parties to publish it;
 - B. that the Commission may issue media releases about this undertaking and the matters referred to therein, and may, from time to time, publicly refer to the undertaking; and
 - C. that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

The common seal of Schwarze Industries Australia Pty Ltd.)
ACN 089 416 937 is affixed in accordance)
with its Articles of Association in the)
presence of:)

Director

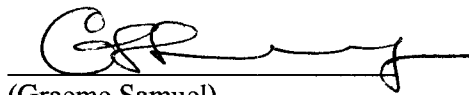


Director

M.C. WEBER

This 29 day of October 2003

Accepted by the Australian Competition and Consumer Commission pursuant to
Section 87B of the Trade Practices Act 1974



(Graeme Samuel)
Chairperson

This 6 day of November 2003

Annexure A
(on Schwarze Industries Australia Pty Ltd Letterhead)

NOTICE FROM SCHWARZE INDUSTRIES AUSTRALIA PTY LTD

The Australian Competition and Consumer Commission (“the Commission”) has raised concerns with Schwarze regarding the promotion of its Schwarze A6500XL and A5500 road suction sweepers.

Between February 2001 and February 2002, Schwarze distributed documents claiming the Australian content of the A6500XL and A5500 to be over 80%. The documents were widely distributed in response to tender requests and may have been provided to you.

Schwarze did not set out to deliberately mislead, but did unwittingly calculate Australian content incorrectly and accordingly may have misled you, contrary to section 52 of the *Trade Practices Act 1974* (Cth). It has however satisfied the Commission that its Australian content at the time exceeded 50% and that it was accordingly entitled to represent that the sweepers were *Australian made*.

Schwarze regrets any inconvenience caused.

Schwarze has provided an undertaking to the Commission under section 87B of the *Trade Practices Act 1974* (Cth) that it will not make representations of the type referred to above without first making all enquiries and calculations necessary to substantiate any specific claim. It will also have its relevant staff undergo trade practices compliance training to ensure, as far as possible, that such representations are not made again.

Should you have any queries or questions about this matter, please contact Mr Mike Webber of Schwarze Industries Australia Pty Ltd.