



TRADE PRACTICES ACT 1974

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

BY

SAINT-GOBAIN ABRASIVES PTY LTD

(A.C.N. 068 931 420)

PERSON GIVING THE UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Saint-Gobain Abrasives Pty Ltd (ACN 068 931 420) (**Saint-Gobain**), of 4-6 Colbert Road, Campbellfield, in the State of Victoria under section 87B of the *Trade Practices Act 1974* (**the TPA**).

BACKGROUND

2. Saint-Gobain manufactures and supplies various abrasive products from its plant at Lidcombe, Sydney, including coated abrasive products such as metalite belts, portable belts and cloth belts, under the Norton, Carborundum and Flexovit brand names.
3. In relation to Norton-branded coated abrasive cloth disc products, Saint-Gobain imports the component materials in the form of jumbo rolls from its affiliated company, Saint-Gobain Hamplas Indonesia. The jumbo rolls are cut into 125mm and 178mm discs at its Lidcombe plant and are then labelled and packaged as "*Norton Sanding discs for metal Australian Made*" with the product codes: CP207497, CP207500, CP207519, CP207489, CP207470, CP207462 (**the Products**).
4. The ACCC considers that by representing that the Products were Australian Made (**the Representation**) in circumstances where the Products were not wholly or substantially the result of manufacturing processes carried out in Australia, Saint-Gobain:
 - (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of section 52 of the TPA;
 - (b) falsely represented that the Products had a particular history, in contravention of section 53(a) of the TPA; and
 - (c) made a false or misleading representation concerning the place of origin of the Products in contravention of section 53(eb) of the TPA.
5. Saint-Gobain acknowledges that by engaging in the conduct described in paragraph 3 above, it has contravened sections 52, 53(a) and 53(eb) of the TPA.
6. In response to the ACCC concerns, Saint-Gobain gives the following Undertaking to the ACCC for the purposes of section 87B of the TPA.

COMMENCEMENT OF UNDERTAKING

7. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Saint-Gobain; and
 - (b) the ACCC accepts the Undertaking so executed.

UNDERTAKING

Cease and Refrain From Making False and Misleading Representations

8. Saint-Gobain undertakes for the purposes of section 87B of the TPA that Saint-Gobain will, for a period of 5 years from the date of this Undertaking coming into effect, whether by itself, its directors, servants or agents or otherwise howsoever, in trade or commerce, in connection with the supply or possible supply of the Products or in connection with the promotion by any means of the supply or use of the Products, immediately cease and thereafter refrain from making:

- (a) any representation, including on labelling, packaging, in any brochure or other promotional material, to the effect that the Products:
 - (i) are "Australian Made";
 - (ii) are "Made in Australia";
 - (iii) originate from Australia,

where the Products have not been substantially transformed in Australia and 50% or more of the cost of manufacturing the Products is not attributable to manufacturing processes that occurred in Australia;

- (b) any other representation:
 - (i) that the Products have had a particular history; and/or
 - (ii) concerning the place of origin of the Products,

when the Products have not had that history and/or do not have that place as their origin.

9. Saint-Gobain further undertakes that it will, within 60 days of the date of this Undertaking coming into effect, use its best endeavours to place a corrective sticker over the text containing the Representation on the packaging and labelling of stock of the Products that Saint-Gobain has already supplied to retail outlets across Australia..

Corrective Notices and Refunds

10. Saint-Gobain further undertakes that it will, at its own expense:
- (a) within 30 days of this Undertaking coming into effect cause to be sent to all retailers who stock any of the Products, a letter in the form and terms of

“Annexure A”, subject only to such variations as may be agreed to by the ACCC in writing;

- (b) use its best endeavours to ensure that all retailers who stock the Products and who receive the letter at Annexure A, display such letter in a prominent in-store position where the Products are physically situated at that retailer’s premises for a period of three consecutive months from the date of receipt of such letter; and
 - (c) within 45 days of this Undertaking coming into effect, provide the ACCC with a schedule in writing which lists the name and address of each retailer to whom a letter has been sent pursuant to subparagraph 10(a) above.
11. Within 30 days of the date of this Undertaking coming into effect, Saint-Gobain will, at its own expense, cause to be published in a major daily newspaper in each State and Territory in which Saint-Gobain supplies the Products, a consumer notice in the form and terms of **“Annexure B”**, subject only to such variations as may be agreed to by the ACCC in writing. Such notice will be:
- (a) published in the following major daily newspapers:
 - (i) The Sydney Morning Herald (NSW);
 - (ii) The Courier Mail (QLD);
 - (iii) The Age (VIC);
 - (iv) The Advertiser (SA);
 - (v) Northern Territory News (NT);
 - (vi) The West Australian (WA);
 - (vii) The Mercury (TAS); and
 - (viii) The Canberra Times (ACT).
 - (b) of a size not less than 12cm x 10cm;
 - (c) in text which is in a type size not less than 9 point;
 - (d) published in the first 5 pages of the general news section of each of the above newspapers; and
 - (e) published once in each of the above newspapers.
12. In the event that Saint-Gobain receives a request for a refund from a person in response to:
- (a) the letter required to be sent pursuant to subparagraph 10(a) above;
 - (b) the consumer notice required to be published in a major daily newspaper in each State and Territory in which Saint-Gobain supplies the Products pursuant to paragraph 11 above,

Saint-Gobain will refund the full purchase price of the Products to that person, so long as the request is received by Saint-Gobain within 6 months of the date of this Undertaking coming into effect.



13. Saint-Gobain will, within 2 weeks from the end of the 6 month period starting from the date of this Undertaking coming into effect, provide the ACCC with a report giving details of the total refunds sought, the number of refunds processed and approved and the total value of the refunds.


Trade Practices Compliance Program

14. Saint-Gobain further undertakes that it will:
- (a) implement a corporate trade practices compliance program in the manner and form described in "Annexure C" to this Undertaking, within 3 months of the date of this Undertaking coming into effect; and
 - (b) maintain and continue to implement the said program for a period of 3 years from the date of this Undertaking coming into effect.

ACKNOWLEDGEMENTS

15. Saint-Gobain acknowledges that the ACCC will make this Undertaking available for public inspection, including by placing it on a public register.
16. Saint-Gobain further acknowledges that the ACCC will, at its absolute discretion, from time to time publish and publicly refer to this Undertaking.
17. Saint-Gobain further acknowledges and accepts that this Undertaking in no way derogates from the rights and remedies that may be available to any other person arising from the conduct of Saint-Gobain referred to above.

EXECUTED by Saint-Gobain Abrasives Pty)
Ltd (ACN 068 931 420) by its authorised)
officers pursuant to section 127(1) of the)
Corporations Act 2001:



Signature

ROGER FREEMAN

Print name

DIRECTOR

Office held

Signature

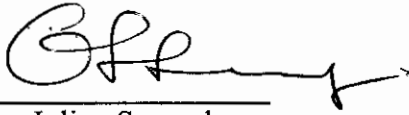
Print name

Office held

This 14 day of February 2005



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



Graeme Julian Samuel
Chairman

This 2nd day of March, 2005



ANNEXURE A

TEXT OF CORRECTIVE LETTER TO RETAILERS

[On Saint-Gobain Abrasives Pty Ltd letterhead]

Dear [insert name of addressee]

Important Information about Norton-branded coated abrasive cloth sanding discs for metal

Saint-Gobain Abrasives Pty Ltd (Saint-Gobain) recently gave a court enforceable undertaking to the Australian Competition and Consumer Commission (ACCC) in relation to concerns raised by the ACCC regarding the labelling of the place of origin of Norton-branded 125mm and 178mm coated abrasive cloth sanding discs for metal with the product codes: CP207497, CP207500, CP207519, CP207489, CP207470, CP207462 (the Products).

Saint-Gobain imports the component materials in the form of jumbo rolls from its affiliated company, Saint-Gobain Hamplas Indonesia, and then cuts them into 125mm and 178mm discs at its Lidcombe plant. Accordingly, the ACCC considers that by labelling the Products as Australian Made in circumstances where the Products were not wholly or substantially the result of manufacturing processes carried out in Australia, Saint-Gobain engaged in conduct in breach of sections 52, 53(a) and 53(eb) of the *Trade Practices Act 1974*.

As part of the undertaking given to the ACCC, Saint-Gobain has also agreed to refrain from making similar representations concerning the Products in the future, re-label existing stock of the Products and implement and maintain a trade practices compliance program.

If a consumer considers they were misled by the conduct of Saint-Gobain in misrepresenting the place of origin of the Products and wishes to obtain a refund for any of the Products, they can return the Products and send their request for a refund to:

The Consumer Products Division
Saint-Gobain Abrasives Pty Ltd
4-6 Colbert Rd
Campbellfield VIC 3061

Consumers should remember to include in their request, their name, contact details, the name of the retailer from whom they purchased the Products and the date on which they purchased the Products. Saint-Gobain also strongly recommends that consumers return the Products by registered post as Saint-Gobain will not be responsible for any items lost in transit.

Saint-Gobain is offering a refund to consumers until **[insert date]**. Consumers should, therefore, ensure that the Products and their request for a refund, is received by no later than this date. Details of purchase must also be supplied.

If you have any queries about this letter, please call Saint-Gobain on **[insert contact phone number]**.

This is not a product safety or quality matter.

Yours sincerely

[insert name and position title]

ANNEXURE B

TEXT OF CORRECTIVE NOTICE TO APPEAR IN NEWSPAPERS



CONSUMER NOTICE FROM SAINT-GOBAIN ABRASIVES PTY LTD

Saint-Gobain Abrasives Pty Ltd (Saint-Gobain) recently gave a court enforceable undertaking to the Australian Competition and Consumer Commission (ACCC) in relation to concerns raised by the ACCC regarding the labelling of the place of origin of Norton-branded 125mm and 178mm coated abrasive cloth sanding discs for metal with the product codes: CP207497, CP207500, CP207519, CP207489, CP207470, CP207462 (Products).

The ACCC considers that by labelling the Products as Australian Made in circumstances where the Products were not wholly or substantially the result of manufacturing processes carried out in Australia, Saint-Gobain engaged in conduct in breach of sections 52, 53(a) and 53(eb) of the *Trade Practices Act 1974*.

If you consider to have been misled by the conduct of Saint-Gobain in misrepresenting the place of origin of the Products and wish to obtain a refund for any of the Products you have purchased, please return the Products and send your request for a refund by **[insert date]** to:

The Consumer Products Division
Saint-Gobain Abrasives Pty Ltd
4-6 Colbert Rd
Campbellfield VIC 3061

Remember to include in your request, your name, and contact details. Details of purchase must also be supplied. Saint-Gobain also strongly recommends that you return the Products by registered post as Saint-Gobain will not be responsible for any items lost in transit.

If you have any queries about this notice please call Saint-Gobain on **[insert contact phone number]**.

This is not a product safety or quality matter.

This notice has been paid for by Saint-Gobain and placed because of the Undertaking given to the ACCC by Saint-Gobain.

ANNEXURE C

CORPORATE TRADE PRACTICES COMPLIANCE PROGRAM

1. Saint-Gobain shall use its best endeavors to ensure that the corporate trade practices compliance program (**Compliance Program**) is designed and implemented so as to comply with each of the following requirements:
 - (a) The Compliance Program is to cover all officers, employees, representatives and agents of Saint-Gobain who perform duties in Australia;
 - (b) The Compliance Program is to inform the officers, employees, representatives and agents of Saint-Gobain who perform duties in Australia of the application of sections 52, 53(a), 53(eb) and 55 of the TPA (**relevant provisions of the TPA**) to Saint-Gobain's business;
 - (c) The Compliance Program must require the appointment of a senior officer, within 3 months of the date of this Undertaking coming into effect, whose responsibilities are to include the maintenance and continuing implementation of the Compliance Program and who reports directly to the Board (**Compliance Officer**);
 - (d) The Compliance Program is to make provision for officers, employees, representatives and agents of Saint-Gobain to confidentially notify the Compliance Officer of potential breaches of the relevant provisions of the TPA and the Compliance Program by Saint-Gobain;
 - (e) The Compliance Program is to include an appropriate complaints handling system consistent with Australian Standard AS4269-1995;
 - (f) The Compliance Program must require the Compliance Officer to keep and maintain a register of potential breaches and/or complaints related to the relevant provisions of the TPA;
 - (g) The Compliance Program is to ensure that compliance with the TPA is discussed at regular meetings between management and staff;
 - (h) The Compliance Program is to ensure that compliance with the TPA becomes part of normal business practice at Saint-Gobain;
 - (i) The Compliance Program must require the development of a disciplinary policy or code for those employees and agents who do not comply with the Compliance Program or the relevant provisions of the TPA or with the clauses of this Undertaking;
 - (j) The Compliance Program must require that compliance with the Compliance Program and the relevant provisions of the TPA is a Key Performance Indicator for all employees;

- (k) The Compliance Program is to provide for regular trade practices training to be conducted at least once a year by internal legal counsel and/or a solicitor or compliance professional with expertise in trade practices law for all officers, employees, representatives and agents of Saint-Gobain; and
 - (l) The Compliance Program is to provide for an induction program on trade practices compliance issues to be undertaken by all new officers, employees, representatives and agents of Saint-Gobain within three months of his or her engagement.
2. Saint-Gobain shall, at its own expense, within 4 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the documents constituting the Compliance Program, together with a letter confirming that the Compliance Program has been implemented in accordance with the requirements of this Undertaking.
 3. In order to ensure that the Compliance Program complies with each of the requirements set out above, Saint-Gobain shall retain an independent compliance professional with expertise in trade practices law (**Compliance Professional**), for the purpose of assisting in developing the Compliance Program. The Compliance Professional will qualify as independent on the basis that he or she is not a present or past staff member or director of Saint-Gobain and has no shareholding or other interests in Saint-Gobain.
 4. Saint-Gobain shall, at its own expense and for the purpose of ensuring that it maintains and continues to implement the Compliance Program, cause annual audits of the Compliance Program (**Audits**) to be carried out in accordance with each of the following requirements:
 - (a) Saint-Gobain shall ensure that the Audits are carried out by an independent compliance professional with expertise in trade practices law (**Auditor**). The Auditor will qualify as independent on the basis that he or she:
 - (i) is not a present or past staff member or director of Saint-Gobain;
 - (ii) has not acted or does not act for Saint-Gobain;
 - (iii) is not retained by Saint-Gobain in any other capacity, either currently or in the past;
 - (iv) has not and does not provide consultancy or other services for Saint-Gobain; and
 - (v) has no shareholding or other interests in Saint-Gobain.
 - (b) Saint-Gobain shall use its best endeavors to ensure that the Auditor:
 - (i) conducts a critical review as to whether the Compliance Program has been implemented in compliance with each of the requirements of this Undertaking; and

- (ii) makes such recommendations as he/she considers necessary to ensure that the Compliance Program complies with each of the requirements of this Undertaking;
 - (c) Saint-Gobain shall ensure that the Audits are able to be conducted by the Auditor on the basis of any relevant information in Saint-Gobain's possession or control, including without limitation any of the following sources of information:
 - (i) investigations of any officers, employees, representatives and agents of Saint-Gobain to find out how compliance processes are implemented and understood;
 - (ii) enquiries of customers about their experience of Saint-Gobain and its products / services;
 - (iii) Saint-Gobain's records, including Saint-Gobain's complaints register and any documents relevant to Saint-Gobain's training or induction program; and
 - (iv) documents created by Saint-Gobain's consultants and solicitors for use in Saint-Gobain's Compliance Program.
 - (d) Saint-Gobain shall use its best endeavors to ensure that the first Audit is completed within one year and one month of this Undertaking coming into effect and that each subsequent Audit is completed within one year thereafter;
 - (e) Saint-Gobain shall use its best endeavors to ensure that the findings in relation to each of the Audits are set out in a written report (**Audit Reports**) and provided to Saint-Gobain within 14 days of the completion of each of the Audits. The Audit Reports are to include a record of any potential contraventions of the relevant provisions of the TPA and the Compliance Program that were identified during the Audits and the action taken to address the potential contraventions.
5. Saint-Gobain shall implement promptly and with due diligence the recommendations which the Auditor may make that are reasonably necessary to ensure that it maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
6. Saint-Gobain shall, at its own expense, cause to be produced and provided to the Commission copies of each of the Audit Reports within 14 days of Saint-Gobain receiving them.
7. Saint-Gobain shall also, at its own expense, if requested by the Commission, provide copies of any other documents and information in respect of matters which are the subject of the Compliance Program.