



TRADE PRACTICES ACT 1974

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

BY

MASPORT LIMITED

PERSONS GIVING THIS UNDERTAKING

1. These undertakings are given to the Australian Competition and Consumer Commission (ACCC) by:
 - a) Masport Limited, (Masport) of 1-37 Mt Wellington Highway, Panmure Auckland 6, New Zealand .

Under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. The Australian/New Zealand Standard, AS/NZS 4013 (the Standard), is used to regulate the maximum particle emission rates in most States and Territories within Australia of woodheaters. This Standard specifies a maximum allowable particle emissions of 4g per kilogram of wood burnt, under controlled test conditions. The Standard also stipulates that models tested must comply with (a) design drawings submitted by the manufacturer and (b) specified labelling requirements.
3. However, there are doubts that the emissions performance of woodheaters available for retail purchase actually comply with the Standard, as testing for certification purposes is conducted on a prototype model rather than a mass-produced model. To address this issue, woodheaters are routinely audited in many states in the US but, until recently, audits have not been conducted in Australia.
4. Regarding the testing of woodheaters for compliance with the Standard, the particle emissions performance of retail models, however, may not be the same as certification results because (a) woodheater models sold may differ from models tested in the laboratory and (b) woodheaters may have been modified, for example, to achieve longer burn times.
5. In recognising the need to better characterise woodheater emissions from models actually sold to the public, a National Woodheater Audit Program, was implemented by the Australian Home Heating Association (AHHA), on behalf of the Australian Government and participating States.

6. Results from the National Woodheater Audit Program demonstrated that the degree of non-compliance, in terms of emissions performance, engineering design specifications and labelling requirements, was significant and needed to be addressed by industry. The importance of these results has been recognised by governments, the AHHA and individual manufacturers, through the development of an action plan.
7. The action plan is set out in detail at: -

<http://www.deh.gov.au/atmosphere/airquality/publications/pubs/action-plan.pdf>
8. The action plan, which addresses the key findings of the National Woodheater Audit Program, is a joint initiative of the Australian, NSW, Victorian, South Australian, Western Australian and Tasmanian governments, and the AHHA.
9. These undertakings by Masport also address the key findings of the National Woodheater Audit Program.

SPECIFICS

10. Masport is incorporated in New Zealand and its principal activity is as a manufacturer and supplier of wood heaters.
11. Masport voluntarily participated in the National Woodheater Audit Program, and Woodheater models distributed by Masport were tested by AHHA Testing Laboratory and found not to comply with the Standard in the following respects:
 - (a) Labelling - Statement of compliance refers to superseded standard; Reference is made to a water heating facility, when this facility has not been tested; Although the model is certified for hardwood only, operating manual documents that coal briquettes may be burnt; BURN ONLY marking is not visible when door is open.
12. The ACCC advised Masport that in failing to comply with the Standard the ACCC was concerned that Masport may have:
 - a) Engaged in misleading conduct and contravened section 52 of the TPA;
 - b) Falsely represented that its goods were of a particular standard, quality, value or grade and contravened section 53(a) of the TPA; and
 - c) Falsely represented that its goods or services have performance characteristics they do not and contravened section 53(c) of the TPA.

UNDERTAKINGS

13. In consequence of the matters referred to above, Masport has cooperated with the ACCC to resolve the ACCC's concerns and has offered undertakings pursuant to section 87B of the TPA.

Undertakings offered by Masport

14. In consequence of the matters referred to above Masport undertakes to the ACCC that Masport, by itself, its servants and agents:
- (a) For a period of three years from the date of execution of this Undertaking, will ensure that all woodheaters supplied by it will comply with the Standard.
15. Masport will, at its own expense:
- (a) Within three months of the acceptance by the ACCC of this undertaking, use its best endeavours to design, implement and make provision to maintain and audit a trade practices compliance program (Compliance Program) which is appropriate to the size and nature of Masport's business, and relates to those provisions of the TPA which are relevant to the conduct of Masport's business, including sections 52, 53(a) and 53(c). The Compliance Program shall be maintained for a period of not less than three years;
 - (b) prior to the implementation of the Compliance Program, ensure the Compliance Program is approved by a suitably qualified compliance professional (Compliance Professional) with expertise in trade practices law who is independent of Masport and has no conflict of interest in providing this service to Masport;
 - (c) retain the Compliance Professional to provide the ACCC with a report confirming that the Compliance Program has been implemented and is in accordance with this Undertaking. This report will be provided to the ACCC within four months of the date of this Undertaking coming into effect;
 - (d) cause a review of the Compliance Program to be undertaken by the Compliance Professional annually from the date of this Undertaking for a period of three years. The Compliance Professional shall conduct the reviews and report to the ACCC within 30 days of each annual review to confirm that the review has been conducted.

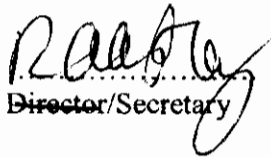
COMMENCEMENT OF UNDERTAKING

16. These Undertakings come into effect when:
- (i) These undertakings are executed by Masport; and
 - (ii) The ACCC accepts the undertakings so executed.

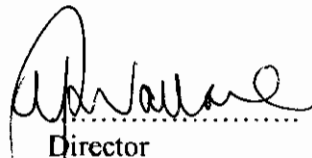
ACKNOWLEDGMENTS

17. Masport acknowledges that the ACCC will make this Undertaking available for public inspection.
18. Masport further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
19. Masport acknowledges and accepts that these undertakings in no way derogate from the rights and remedies available to any other person arising from the alleged conduct.
20. Masport further acknowledges the reports referred to in this Undertaking and the Trade Practices Compliance Program as in force from time to time may be held with this Undertaking on the Public Register.

IN WITNESS of this Undertaking and its agreement the common seal of Masport Limited was hereunto affixed by the authority of the Board of Directors in the presence of:


Director/Secretary

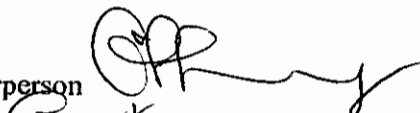
Robert Astley
Name (printed)


Director

Glenn Wallace
Name (printed)

This... 25th ... day of July ... 2005

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

Chairperson 

This... 5th ... day of August ... 2005