

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B****BY****SOUTHERN MOTORS PTY LTD
(ACN 008 712 516)****PERSONS GIVING THIS UNDERTAKING**

1. This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Southern Motors Pty Ltd (ACN 008 712 516) (**Southern Motors**), 154 High Street, Fremantle, in the state of Western Australia, under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

2. Southern Motors trades under the name of Jason Mazda (**Jason**) and sells new and used motor vehicles to consumers in the Perth Metropolitan area.
3. A single page leaflet advertising the sale of a number of Mazda motor vehicles by Jason was inserted in the 28 February 2006 edition of the *Western Suburbs Weekly Community Newspaper* (**the advertisement**). The advertisement was published, or caused to be published, by Southern Motors, and did not state that dealer delivery charges were applicable to the advertised prices of vehicles, when in fact, such charges did apply.
4. The ACCC was concerned that Southern Motors had contravened section 52 of the TPA in that it engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, by failing to disclose that dealer delivery charges were an additional amount to be paid by consumers.
5. The ACCC was also concerned that Southern Motors had contravened section 53(e) of the TPA by making a false or misleading representation that the price of various Mazda motor vehicles was a certain price, when in fact, dealer delivery charges were an additional price to be paid by consumers.
6. These concerns were communicated to Southern Motors who advised the ACCC that the leaflet inserted in the *Western Suburbs Weekly Community Newspaper* was due to an oversight by Southern Motors' advertising staff. Upon being informed of these concerns, Southern Motors immediately took action to ensure no further advertisements would be published which failed to disclose any applicable dealer delivery charges.
7. Southern Motors acknowledges the ACCC's concerns that by failing to disclose that dealer delivery charges were applicable, it may have engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of section 52 of the TPA. Southern Motors also acknowledges that by representing that the price of the various vehicles was a certain price, when in fact dealer delivery charges were an additional price to be paid by consumers, Southern Motors may have engaged in conduct that contravened section 53(e) of the TPA.

8. In response to the ACCC's concerns, Southern Motors has offered an Undertaking to the ACCC, in the terms set out below, under section 87B of the TPA. The ACCC has agreed to accept the Undertaking under section 87B of the TPA.

COMMENCEMENT OF UNDERTAKINGS

9. This Undertaking comes into effect when the ACCC accepts the Undertaking which has been executed by Southern Motors.
10. Upon the commencement of this Undertaking, Southern Motors undertakes to assume the obligations set out in paragraphs 11 to 13.

UNDERTAKINGS

11. Southern Motors undertakes that, for a period of 3 years, when offering or advertising motor vehicles for sale to consumers and making representations as to the price of the motor vehicles, it will prominently disclose any dealer delivery charges that are payable by consumers to Southern Motors, where such charges are not included in the advertised price of the vehicles.
12. Southern Motors undertakes that it will, within 30 days of this Undertaking coming into effect, cause a corrective advertisement to be published in the *Western Suburbs Weekly Community Newspaper*, in the form set out in Annexure A.
13. Southern Motors undertakes, for a period of 3 years from the date of the Undertaking coming into effect, that it will at its own expense update its existing corporate Trade Practices Compliance Program (**Amended Compliance Program**), to ensure the Amended Compliance Program is appropriate to the size and nature of Southern Motors' business and is designed and implemented in accordance with the requirements set out below:
 - a) the Amended Compliance Program is to cover all officers and employees of Southern Motors who are engaged in senior executive, marketing or sales functions (**Relevant Staff**);
 - b) Training – within 3 months of the date of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, the Relevant Staff will attend practical trade practices training focussing on the application of sections 52 and 53 of the TPA;
 - c) Southern Motors will ensure that the training referred to in paragraph (b) above is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
 - d) Southern Motors will use its best endeavours to provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph (b) above to the ACCC within 14 days of completion of the training, verifying that such training has occurred;

- e) Complaint Handling - Within two months of this Undertaking coming into effect, Southern Motors will develop procedures for recording, storing and responding to trade practices complaints;
- f) Southern Motors will notify the ACCC that the complaints handling system has been developed within two months of it coming into effect; and
- g) If requested by the ACCC, Southern Motors will provide, at its own expense, copies of any other documents and information in respect of matters which are the subject of the Amended Compliance Program.

ACKNOWLEDGEMENTS

- 14. Southern Motors acknowledges that the ACCC will make this Undertaking available for public inspection.
- 15. Southern Motors further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
- 16. Southern Motors acknowledges and accepts that these undertakings in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Signed in accordance with Section 127 (1)(c) of the *Corporations Act 2001*.

Director/Secretary: 

This 5th day of MAY 2006.

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



Graeme Julian Samuel
Chairman

This 15th day of May 2006.

Corrective Notice

Jason Mazda

Southern Motors Pty Ltd, trading as Jason Mazda, recently caused the publication of a single page leaflet for insertion in the 28 February 2006 edition of this newspaper. That leaflet advertised various makes and models of Mazda motor vehicles at specified prices.

Unfortunately, the leaflet was incorrect as it failed to include the dealer delivery charges which were payable in addition to the advertised prices.

The Australian Competition and Consumer Commission (ACCC) raised concerns with Southern Motors that due to the failure to include the dealer delivery charges in the leaflet, Southern Motors may have contravened some of the consumer protection provisions under the *Trade Practices Act 1974*.

To address these concerns Southern Motors has undertaken to the ACCC that any future price advertisements will include any applicable dealer delivery charges. The ACCC has accepted court enforceable undertakings from Southern Motors to resolve this matter.

The undertakings accepted by the ACCC do not affect any rights and remedies available to any other person arising from the alleged conduct. If you feel you were misled because of this representation, please call us on 9444 7388 to discuss this matter.

JASON MAZDA

CNR SCARBOROUGH BCH ROAD & HUTTON STREET OSBORNE PARK

DL1581

(Format, font size and font style as appearing in previous advertisement)