

TRADE PRACTICES ACT 1974

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

BY

ALCO BATTERY SALES (AUST) PTY LIMITED

(ACN 002 915 326)

PERSONS GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Alco Battery Sales (Aust) Pty Limited (ACN 002 915 326) (**Alco Battery Sales**) of Unit 3, 92-94 Batt Street, Penrith in the State of New South Wales under section 87B of the *Trade Practices Act 1974* (**the Act**).

BACKGROUND

2. Alco Battery Sales is incorporated in New South Wales and is one of Australia's leading importers and distributors of batteries for various applications.
3. Alco Battery Sales' head office is in Penrith, New South Wales. It has 8 branches and a number of distributors to service its customers throughout Australia and the South Pacific region.
4. Alco Battery Sales is an Australian distributor of Fullriver batteries. It also distributes batteries from Atlas BX, Delkor, Trojan and First National Batteries.
5. Fullriver batteries are manufactured by Fullriver Battery Manufacture Co., Ltd (**Fullriver Battery**) based in China. In July 2006, Alco Battery Sales started importing the Fullriver DCG Series batteries (**Fullriver DCG batteries**) from Fullriver Battery.
6. Alco Battery Sales had imported approximately 3700 units of Fullriver DCG batteries during the period from July 2006 to 19 December 2007.
7. Alco Battery Sales advertised the Fullriver DCG batteries, amongst other products, on its website at the following URLs : www.alcobatt.com.au, www.batteries-aust.com and www.alcobatterysales.com.au.

8. On 22 June 2007, the ACCC received a complaint alleging that Alco Battery Sales was importing and supplying in Australia Fullriver DCG batteries and representing such batteries to be gel batteries whereas in fact they were absorbed glass mat (AGM) batteries.
9. Gel and AGM batteries each have their own specific features designed to suit different applications such as golf buggies, caravans, electric scooters, four wheel drive vehicles, boats and electric wheelchairs.
10. Gel batteries can be left discharged for longer periods of time without affecting their ability to recover. In contrast, AGM batteries have a higher charge acceptance rate than other types and they are not as susceptible as gel batteries to damage caused by lack of charge voltage control.
11. In response to the complaint received, the ACCC raised with Alco Battery Sales its concerns as to the composition of the Fullriver DCG batteries it was supplying in Australia. The ACCC requested Alco Battery Sales to provide an independent test report to substantiate the composition of these batteries.
12. On 20 November 2007, the ACCC received a copy of a test report dated 31 October 2007 from Alco Battery Sales (**test report**). The test was carried out by China Guangzhou Electrical Safety Testing Institute of State Bureau of Quality and Technical Supervision (**CEST**) on behalf of Fullriver Battery and a copy provided to Alco Battery Sales.
13. The test report concluded that the Fullriver DCG100-12/GEL battery tested by CEST, being a battery supplied by Alco Battery Sales, contained only 0.55% of silicon dioxide.
14. Silicon dioxide is a hard, glassy mineral found in such materials as rock, quartz, sand and opal. In deep cycle batteries it is added to the electrolyte to create a silica type gel which allows electrons to flow between plates but will not leak from the battery if the case is broken.
15. By supplying batteries labelled Fullriver DCG100-12/GEL, and other Fullriver DCG batteries containing similar labelling, Alco Battery Sales represented that those batteries were gel batteries, when in fact, as a result of the very low percentage of silicon dioxide they contained, the batteries were more properly to be considered as AGM batteries. The ACCC considers, and Alco Battery Sales agrees, that by engaging in this conduct Alco Battery Sales engaged in conduct that was false, misleading or deceptive, in contravention of sections 52, 53(a) and 53(c) of the Act.

16. Upon becoming aware of the test report and the ACCC's concerns, Alco Battery Sales:
- (a) ceased importing the Fullriver DCG batteries from Fullriver Battery, effective from 20 December 2007;
 - (b) cancelled all further orders for Fullriver DCG batteries, effective from 12 October 2007;
 - (c) contacted all 43 customers who had purchased the Fullriver DCG batteries from Alco Battery Sales and informed them that the Fullriver DCG batteries supplied to them may in fact not have been true gel batteries and invited its customers to contact their nearest Alco Battery Sales branch to discuss the matter; and
 - (d) re-labelled its remaining stock of Fullriver DCG batteries as "DC" rather than "DCG" gel batteries.
17. The ACCC acknowledges that Alco Battery Sales has co-operated in resolving this matter and has taken a number of steps to address the ACCC's concerns.
18. Given that Alco Battery Sales is a regular importer and supplier of batteries in Australia, and to address the concerns of the ACCC, it has offered to give the Undertaking in the terms set out below to the ACCC under section 87B of the Act. The ACCC has agreed to accept the Undertaking under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

19. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Alco Battery Sales; and
 - (b) the ACCC accepts the Undertaking so executed.

UNDERTAKINGS

Cease and refrain from making misleading representations

20. Alco Battery Sales undertakes that it 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 batteries or in connection with the promotion by any means of the supply or use of batteries, immediately cease and thereafter refrain from making:

- (a) any representation, including on product labelling, on its website, in any brochure or other promotional material, to the effect that the batteries it supplies are gel batteries in circumstances where they are not gel batteries; and
- (b) any other representation that the batteries it supplies or proposes to supply are of a particular composition when the batteries are not of that composition.

Corrective Apology and Refunds

21. Alco Battery Sales further undertakes that it will at its own expense:

- (a) within 21 days of this Undertaking coming into effect, publish a corrective notice in the form and terms of **Annexure A**, subject only to such variations as may be agreed to by the ACCC in writing, to be displayed in a prominent position at its head office and each of its branches throughout Australia;
- (b) within 21 days of this Undertaking coming into effect, publish a corrective notice in the form and terms of **Annexure B**, subject only to such variations as may be agreed to by the ACCC in writing, and use its best endeavours to display the notice in a prominent position in all retail stores that resupplied the Fullriver DCG batteries purchased from Alco Battery Sales;
- (c) within 30 days of the date of this Undertaking coming into effect, cause to be published on its Website a 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:
 - (i) in an automatically generated active pop-up window or message box and shall appear immediately to consumers on access to the homepage of the Website;
 - (ii) of a size that occupies at least 40% of the home page;
 - (iii) in text which is in a type not less than 10 font size print; and
 - (iv) maintained on the Website for a period of not less than 60 consecutive days.
- (d) cause to be sent to all its customers for whom it has contact details and who purchased Fullriver DCG batteries from Alco Battery Sales during the period from July 2006 to December 2007, a letter in the form and terms of **Annexure C**, subject only to such variations as may be agreed to by the ACCC in writing.

22. In the event that Alco Battery Sales receives a request for a refund or replacement battery from a person in response to:

- (a) the corrective notices required to be published in-store or on the Website pursuant to subparagraphs 21(a), (b) and (c) above; and/or
- (b) the letter required to be sent pursuant to subparagraph 21(d) above,

Alco Battery Sales will refund the full purchase price of the battery to that person or arrange, at its own expense, to have the battery replaced with a comparable DC gel battery to that purchased so long as the request is received by Alco Battery Sales within 6 months of the date of this Undertaking coming into effect.

23. Alco Battery Sales 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 or replacement batteries sought and the names of the people who sought them, the number of refunds and replacements processed and approved and the total value of the refunds and replacements.

Trade Practices Compliance Program

24. Alco Battery Sales undertakes that it will:
- (a) within three (3) months of the date of this Undertaking coming into effect, establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure D** for the employees or other persons involved in Alco Battery Sales' business, being a program designed to minimise Alco Battery Sales' risk of future breaches of sections 52 and 53 of the Act, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 52 and 53 of the Act;
 - (b) maintain and continue to implement the Trade Practices Compliance Program for a period of three (3) years from the date of this Undertaking coming into effect; and
 - (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure D.

ACKNOWLEDGEMENTS

25. Alco Battery Sales acknowledges that the ACCC will make this Undertaking available for public inspection.
26. Alco Battery Sales further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
27. Alco Battery Sales further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by Alco Battery Sales (Aust) Pty Limited (ACN 002 915 326) by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*:

[Handwritten Signature]
.....

Director

[Handwritten Signature]
.....

Director

DAVID R REES
.....

Print Name

JONATHAN G REES
.....

Print Name

This *8th* day of *May* 2008

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*

[Handwritten Signature]
.....

Graeme Julian Samuel
Chairman
Australian Competition and Consumer Commission

This *13th* day of *May* 2008

ANNEXURE A**“IMPORTANT NOTICE – FULLRIVER DCG BATTERIES**

From July 2006 to December 2007, Alco Battery Sales (Aust) Pty Limited (**Alco Battery Sales**) represented that the Fullriver DCG Series batteries [insert relevant model or serial numbers] (the **Products**) it supplied in Australia were gel batteries. However, testing of a DCG100-12/Gel Product showed that it contained only 0.55% silicone dioxide and accordingly, it was not a gel battery. The Product tested was in fact an absorbed glass mat (**AGM**) battery.

The Australian Competition and Consumer Commission (**ACCC**) expressed concern that by representing the Products as gel batteries in circumstances where they were AGM batteries, consumers were misled about the composition of the Products in breach of sections 52, 53(a) and 53(c) of the *Trade Practices Act 1974*.

To address its concerns, the ACCC accepted from Alco Battery Sales a court enforceable undertaking. As part of the undertaking, Alco Battery Sales has agreed to refrain from making similar representations concerning the composition of the Products in the future, offer a full refund of the purchase price of the Products to those consumers who purchased the Product from Alco Battery Sales, or a distributor or a retailer who supplied them with the Product or offer a replacement battery and to implement and maintain a trade practices compliance program.

If you consider to have been misled by the conduct of Alco Battery Sales in misrepresenting the composition of the Products and wish to obtain a refund for this Product or a replacement battery, please speak to us today or alternatively send your request for a refund or replacement to:

[Insert Reply Paid Postal Address].

Please remember to include in your request your name, contact details, the model number of the battery purchased and order number for us to be able to process your refund or replacement. Alco Battery Sales is offering a refund or replacement to consumers until **[insert date]**. You should, therefore, ensure that your request for a refund or a replacement is sent in time so that it is received by no later than this date. Proof of purchase must also be produced.

If you have any queries about this notice or about a Fullriver DCG product supplied by Alco Battery Sales you have purchased, please call Alco Battery Sales on **[insert contact phone number]**.



This notice has been paid for by Alco Battery Sales and placed because of the undertaking given to the ACCC by Alco Battery Sales.

ANNEXURE B

“IMPORTANT NOTICE – FULLRIVER DCG BATTERIES

From July 2006 to December 2007, Alco Battery Sales (Aust) Pty Limited (**Alco Battery Sales**) represented that the Fullriver DCG Series batteries [**insert relevant model or serial numbers**] (the **Products**) it supplied in Australia were gel batteries. However, testing of a DCG100-12/Gel Product showed that it contained only 0.55% silicone dioxide and accordingly, it was not a gel battery. The Product tested was in fact an absorbed glass mat (**AGM**) battery.

The Australian Competition and Consumer Commission (**ACCC**) expressed concern that by representing the Products as gel batteries in circumstances where they were AGM batteries, consumers were misled about the composition of the Products in breach of sections 52, 53(a) and 53(c) of the *Trade Practices Act 1974*.

To address its concerns, the ACCC accepted from Alco Battery Sales a court enforceable undertaking. As part of the undertaking, Alco Battery Sales has agreed to refrain from making similar representations concerning the composition of the Products in the future, offer a full refund of the purchase price of the Product to those consumers who purchased the Product from Alco Battery Sales, or a distributor or a retailer who supplied them with the Product or offer a replacement battery and to implement and maintain a trade practices compliance program.

If you consider to have been misled by the conduct of Alco Battery Sales in misrepresenting the composition of the Products and wish to obtain a refund for this Product or a replacement battery, please send your request for a refund or replacement to:

[Insert Reply Paid Postal Address]

Please remember to include in your request your name, contact details, the model number of the battery purchased and order number for us to be able to process your refund or replacement. Alco Battery Sales is offering a refund or replacement to consumers until [**insert date**]. You should, therefore, ensure that your request for a refund or a replacement is sent in time so that it is received by no later than this date. Proof of purchase must also be produced.

If you have any queries about this notice or about a Fullriver DCG product supplied by Alco Battery Sales you have purchased, please call Alco Battery Sales on [**insert contact phone number**].



This notice has been paid for by Alco Battery Sales and placed because of the undertaking given to the ACCC by Alco Battery Sales.

ANNEXURE C

**TEXT OF LETTER ON ALCO BATTERY SALES LETTERHEAD
TO BE SENT TO ALL CUSTOMERS**

[insert date]

[insert customer name and address]

Dear [insert customer name]

Important information about the composition of Fullriver DCG Series Batteries

Our records show that you purchased a Fullriver DCG Series battery [insert relevant model or serial number] (the **Product**) from Alco Battery Sales (Aust) Pty Limited (**Alco Battery Sales**) during the period from July 2006 to December 2007.

The Australian Competition and Consumer Commission (**ACCC**) recently accepted a court enforceable undertaking from Alco Battery Sales in relation to the **ACCC's** concerns that Alco Battery Sales misled its customers about the composition of the Products it supplied or offered to supply in Australia.

The testing of a DCG100-12/Gel battery showed that it contained only 0.55% silicone dioxide and accordingly, it was not a gel battery. The battery tested was in fact an absorbed glass mat (**AGM**) battery. The **ACCC** expressed concern that consumers were misled about the composition of this and other Products. The **ACCC** considers that by representing the Products as gel batteries in circumstances where they were **AGM** batteries, Alco Battery Sales breached sections 52, 53(a) and 53(c) of the *Trade Practices Act 1974*.

As part of the undertaking, Alco Battery Sales has agreed to refrain from making similar representations concerning the composition of the Products in the future, offer a full refund of the purchase price of the Products to those consumers who purchased the Product from Alco Battery Sales, or a distributor or a retailer who supplied them with the Product or offer a replacement battery and to implement and maintain a trade practices compliance program.

If you consider to have been misled by the conduct of Alco Battery Sales in misrepresenting the composition of the Product and wish to obtain a refund for this Product or a replacement battery, please send your request for a refund or replacement to:

[Insert Reply Paid Postal Address].

Please remember to include in your request your name, contact details, the model number of the battery purchased and order number for us to be able to process your refund or replacement. Alco Battery Sales is offering a refund or replacement to consumers until [insert date]. You should, therefore, ensure that your request for a refund or a replacement battery is sent in time so that it is received by no later than this date. Proof of purchase must also be produced.

If you have any queries about this letter or about a Fullriver DCG product supplied by Alco Battery Sales you have purchased, please call Alco Battery Sales on [insert contact phone number].

Yours sincerely

Annexure D

TRADE PRACTICES COMPLIANCE PROGRAM

Alco Battery Sales will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date of the Undertaking coming into effect Alco Battery Sales will appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program, and who reports directly to the company Board or governing body (**the Compliance Officer**).
2. Alco Battery Sales shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within 1 month of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. Alco Battery Sales shall instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (**the Risk Assessment**) in accordance with subparagraphs 3.1 – 3.4 below:
 - 3.1. identify the areas where Alco Battery Sales is at risk of breaching sections 52 and 53 of the *Trade Practices Act 1974* (**the Act**);
 - 3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Alco Battery Sales should they occur;
 - 3.3. identify where there may be gaps in Alco Battery Sales's existing procedures for managing these risks; and
 - 3.4. provide recommendations for action having regard to the assessment.

Compliance Policy

4. Alco Battery Sales will, issue a policy statement outlining Alco Battery Sales's commitment to trade practices compliance (**the Compliance Policy**). Alco Battery Sales will ensure the Compliance Policy:
 - 4.1. is written in plain language;
 - 4.2. contains a statement of commitment to compliance with the Act;
 - 4.3. contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the Compliance Officer; and

- 4.4. contains a clear statement that Alco Battery Sales will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Act and will not indemnify them.

Complaints Handling System

5. Alco Battery Sales will ensure the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external trade practices complaints.

Training

6. Alco Battery Sales will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical trade practices training for all employees of Alco Battery Sales, whose duties could result in them being concerned with conduct that may contravene sections 52 and 53 of the Act. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to sections 52 and 53 of the Act. Alco Battery Sales must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
7. Alco Battery Sales will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees whose duties could result in them being concerned with conduct that may contravene sections 52 and 53 of the Act.

Reports to Senior Management

8. Alco Battery Sales will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the ACCC

9. Alco Battery Sales shall, at its own expense, within 6 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Australian Competition and Consumer Commission (ACCC) copies of each of the documents constituting the Compliance Program. Alco Battery Sales will implement promptly and with due diligence any recommendations the ACCC may make that are reasonably necessary to ensure that Alco Battery Sales maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Alco Battery Sales shall, at its own expense, cause annual reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:
- 10.1. **Scope of the Review** – the Reviews should be broad and rigorous enough to provide Alco Battery Sales and the ACCC with supportable verification that the Alco Battery Sales has in place a program that complies with each of the

requirements detailed in paragraphs 1-10 above and to provide the Review reports and opinions detailed at paragraph 11 below.

- 10.2. **Independence of Reviewer** – Alco Battery Sales shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
- 10.2.1. did not design or implement the Compliance Program;
 - 10.2.2. is not a present or past staff member or director of Alco Battery Sales;
 - 10.2.3. has not acted and does not act for Alco Battery Sales in any trade practices related matters;
 - 10.2.4. has not and does not act for or consult to Alco Battery Sales or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 10.2.5. has no significant shareholding or other interests in Alco Battery Sales.
- 10.3. **Evidence** – Alco Battery Sales shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Alco Battery Sales's possession or control, including without limitation:
- 10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Alco Battery Sales;
 - 10.3.2. Alco Battery Sales's records, including the company's complaints register/reports and any documents relevant to the Alco Battery Sales training or induction program; and
 - 10.3.3. documents created by the Alco Battery Sales's consultants and legal practitioners for use in the Alco Battery Sales's Compliance Program.
- 10.4. Alco Battery Sales shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

11. Alco Battery Sales shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

Company Compliance Program Review Report (to be provided to Alco Battery Sales)

- 11.1. Alco Battery Sales's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program including:
- 11.1.1. if, and to what extent, the Compliance Program of the Alco Battery Sales includes all the elements detailed in paragraphs 1-10 above;
 - 11.1.2. if, and to what extent, the Trade Practices Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
 - 11.1.3. if, and to what extent, the trade practices training is effective;
 - 11.1.4. if, and to what extent, Alco Battery Sales's complaints handling system is effective;
 - 11.1.5. recommendations for rectifying deficiencies in subparagraphs 11.1.1 – 11.1.4. that the Reviewer thinks are reasonably necessary to ensure that Alco Battery Sales maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

ACCC Compliance Program Review Report (to be provided to the ACCC)

- 11.2. The ACCC Compliance Program Review Report will supply particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:
- 11.2.1. details of the evidence gathered and examined during the Review;
 - 11.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;
 - 11.2.3. the Reviewer's opinion on whether Alco Battery Sales has in place an effective Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1 – 10 above;
 - 11.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of the Alco Battery Sales's Trade Practices Compliance Program;
 - 11.2.5. confirmation that any actual and potential inadequacies in Alco Battery Sales Compliance Program have been brought to the attention of the Compliance Officer and the governing body;
 - 11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in the Alco Battery Sales's Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by Alco Battery Sales;

- 11.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and
- 11.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 11.3. Alco Battery Sales will ensure that the Review Reports are completed and provided to Alco Battery Sales within two months of each Review.
- 11.4. Alco Battery Sales will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
- 12. **Recommendations** - Alco Battery Sales shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC, that are reasonably necessary to ensure that Alco Battery Sales maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
- 13. Alco Battery Sales shall, at its own expense, if requested by the ACCC, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
- 14. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Alco Battery Sales shall, at its own expense and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the ACCC.

ACCC accepts undertaking from Alco Battery Sales (Aust) Pty Limited

Alco Battery Sales is an importer and distributor of batteries for various applications including the Fullriver DCG Series batteries.

From July 2006 to December 2007, Alco Battery Sales represented that the Fullriver DCG series batteries it supplied in Australia were gel batteries. However, testing of a DCG100-12/Gel battery showed that it contained only 0.55% silicone dioxide and accordingly, it was an absorbed glass mat (AGM) battery and not a gel battery.

Gel and AGM batteries each have their own specific features designed to suit different recreational and industrial applications such as golf buggies, electric scooters, four wheel drive vehicles, boats, electric wheelchairs, pallet movers and forklifts.

Gel batteries can be left discharged for longer periods of time without affecting their ability to recover. In contrast, AGM batteries have a higher charge acceptance rate than other types and they are not as susceptible as gel batteries to damage caused by lack of charge voltage control.

The Australian Competition and Consumer Commission expressed concern that by representing the Fullriver DCG series batteries as gel batteries in circumstances where they were AGM batteries, consumers were misled about the composition of the Fullriver DCG series batteries in breach of sections 52, 53(a) and 53(c) of the *Trade Practices Act 1974*.

The ACCC has accepted from Alco Battery Sales a court enforceable undertaking. As part of the undertaking, Alco Battery Sales has agreed to refrain from making similar representations concerning the composition of the batteries it supplied in the future, to offer a full refund of the purchase price to those consumers who purchased the Fullriver DCG series batteries from Alco Battery Sales, or a distributor or a retailer who supplied them with the Fullriver DCG series batteries or offer a replacement battery and to implement and maintain a trade practices compliance program.

The Chairman of the ACCC, Mr Graeme Samuels said today, "When firms make a claim about a product, they should ensure that the claim is correct. In particular when importing products for sale, they should also seek specific assurances that the products are as ordered and maybe seek independent product testing."

Questions and Answers – Alco Battery Sales Pty Limited

Q - Why is this case an issue for the ACCC?

Firstly, consumers are purchasing the gel batteries on the basis that it will be used for various recreational and industrial applications, such as golf buggies or forklifts, which may be more suitable to be charged by a gel battery. Using the wrong type of battery may render the application useless as gel and AGM batteries differ when the battery needs to be discharged and recharged.

Secondly, gel batteries are generally more expensive than AGM batteries, so consumers who have purchased the Fullriver DCG series batteries on the basis that it is a gel battery, have paid more for batteries which are AGM batteries.

How are the gel and AGM batteries manufactured?

Gel and AGM batteries provide sustained power over extended periods of time and are designed to be discharged and recharged.

Gel batteries use a thickening agent like fumed silica to immobilise the electrolyte. Therefore if the battery container cracks or is breached, the battery will continue to function.

AGM batteries do not use gel but a fibre-glass like separator to hold the electrolyte in place.

What are the different effects of using a gel and AGM battery?

Gel batteries have the ability to be discharged for longer periods of time without affecting its ability to recover. However, gel batteries require very strict control over charging voltage and will need to rest after rapid charging.

AGM batteries have a higher charge acceptance rate and are not as susceptible as gel batteries to damage caused by lack of charge voltage control.

What are the different uses for each?

Both gel and AGM batteries can be used for the same recreational or industrial applications – depending on the manufacturers' recommendation.