

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Crossfire Motorcycles Pty Limited ACN 139 756 504.

1. Person giving the Undertaking

1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Crossfire Motorcycles Pty Limited ACN 139 756 504 (**Crossfire**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

2. Background

- 2.1 Crossfire is an importer and supplier of, amongst other products, all-terrain vehicles (also known as ATVs or quad bikes) (**Quad Bikes**) as defined in section 5 of the *Consumer Goods (Quad Bikes) Safety Standard 2019* (**Safety Standard**) which applies to all Quad Bikes supplied by Crossfire.
- 2.2 Part 2 of the Safety Standard came into effect on 11 October 2020 and applies to all Quad Bikes supplied by Crossfire from 11 October 2020. Amongst other things, Part 2 of the Safety Standard requires Quad Bikes to comply with either the:
- (a) American National Standard “ANSI/SVIA 1–2017: American National Standard for Four Wheel All-Terrain Vehicles”, published by the American National Standards Institute, Inc. (**US Standard**), as modified by section 9 of the Safety Standard; or
 - (b) European Standard “EN15997:2011 COR 2012: All terrain vehicles (ATVs—Quads)—Safety requirements and test methods, published by the Comité Européen de Normalisation”, as modified by section 10 of the Safety Standard.
- 2.3 The Quad Bikes supplied by Crossfire seek to comply with the US Standard, as modified by section 9 of the Safety Standard.
- 2.4 The ACCC has investigated whether certain models of Quad Bikes supplied by Crossfire since 11 October 2020 may not comply with Part 2 of the Safety Standard after officers of state and territory protection agencies, as part of a national surveillance program of the Safety Standard coordinated by the ACCC, identified instances in which Crossfire-branded Quad Bikes were deemed to be non-compliant.
- 2.5 In response to the ACCC’s investigation, Crossfire has identified that the following models of Quad Bikes supplied by Crossfire at various times between 11 October 2020 and July 2021 did not or may not comply with the US Standard (as modified and required by section 9 of the Safety Standard) as follows:

Model	Non-compliance
X2	<p>Incorrect engine stop switch fitted (section 4.4 of US Standard)</p> <p>Incorrect age recommendation warning label (section 4.23.4.2 of US Standard)</p> <p>Some required reflex reflectors missing (section 4.17 of US Standard)</p>
X300	<p>No engine stop switch fitted (section 4.4 of US Standard)</p> <p>Some required reflex reflectors missing (section 4.17 of US Standard)</p>
Territory 500	<p>Some required reflex reflectors missing (section 4.17 of US Standard)</p>
Kanga 90	<p>Incorrect age recommendation warning label (section 4.23.4.2 of US Standard)</p> <p>Owner's manual did not contain information alerting consumers to the risk of rollover as required under section 9(b) of the Safety Standard (section 4.21.2 of US Standard)</p> <p>Some required reflex reflectors missing (section 4.17 of US Standard)</p> <p>Potential non-compliant spark arrester fitted (section 9(a) of the Safety Standard)</p>
Trex 110	<p>Incorrect age recommendation warning label (section 4.23.4.2 of US Standard)</p> <p>Some required reflex reflectors missing (section 4.17 of US Standard)</p> <p>Potential non-compliant spark arrester fitted (section 9(a) of the Safety Standard)</p>
Mustang 250	<p>Some required reflex reflectors missing (section 4.17 of US Standard)</p> <p>Potential non-compliant spark arrester fitted (section 9(a) of the Safety Standard)</p>
Rover 125	<p>Incorrect age recommendation warning label (section 4.23.4.2 of US Standard)</p> <p>Some required reflex reflectors missing (section 4.17 of US Standard)</p> <p>Potential non-compliant spark arrester fitted (section 9(a) of the Safety Standard)</p>

2.6 Crossfire has initiated recalls of the models identified at paragraph 2.5 supplied between 11 October 2020 and July 2021 (**Recall**) as published on the Product Safety Australia website (productsafety.gov.au) to rectify the non-compliance (and potential non-compliance). Crossfire is working with its manufacturers to ensure that the Quad Bikes Crossfire supply comply with all aspects of the Safety Standard.

3. **Resolution**

3.1 In response to the ACCC's concerns, Crossfire:

- (a) admits that its conduct described in paragraph 2.5 contravened or was likely to have contravened section 106 of the *Australian Consumer Law (ACL)*, contained in Schedule 2 to the CCA; and
- (b) has offered this Undertaking to the ACCC.

4. **Commencement of this Undertaking**

4.1 This Undertaking comes into effect when this Undertaking:

- (a) is executed by Crossfire, and
- (b) so executed is accepted by the ACCC,
(the **Commencement Date**).

4.2 This Undertaking has effect for three years from the Commencement Date (the **Term**).

5. **Undertaking**

5.1 Crossfire undertakes for the purposes of section 87B of the CCA that, during the Term:

- (a) it will not, in trade or commerce, supply Quad Bikes to any person that do not comply with the Safety Standard as in force from time to time; and
- (b) that it will, in relation to the Recall:
 - (i) prominently publish the Recall on the homepage of Crossfire's website for at least 3 years from the Commencement Date, or until the completion of the Recall, whichever occurs first;
 - (ii) provide recall progress reports to the ACCC on a monthly basis for 1 year from the Commencement Date, commencing no later than 30 January 2022, and every 3 months for the rest of the Term of the Undertaking, or until the completion of the Recall, whichever occurs first. These progress reports will include details of:
 - (A) the number of Quad Bikes returned to Crossfire or other entities, including dealers, and repaired, or booked in for repair with Crossfire or other entities, including dealers, of which it is aware of, and the number of recall kits supplied by Crossfire to dealers during the reporting period; and

- (B) the number of complaints received by Crossfire during the reporting period about the Quad Bikes and the nature of these complaints; and
 - (iii) maintain records of the consumers and dealers Crossfire has contacted or sought to contact as part of the Recall and where it is aware, consumers that were contacted by dealers, including how and when Crossfire and where it is aware, dealers, contacted them, or attempted to contact them;
- (c) that it will:
 - (i) establish and implement a Compliance Program (**Compliance Program**) in accordance with the requirements set out in "Annexure A", being a program designed to minimise Crossfire's risk of non-compliance with the Safety Standard and contraventions of section 106 of the ACL, and the ACL more broadly, and to ensure its awareness of the responsibilities and obligations in relation to the requirements of the Safety Standard and section 106 of the ACL more broadly (as it applies to Crossfire's business) within 120 days of the Commencement Date;
 - (ii) maintain and continue to implement the Compliance Program for a period of 3 years from the Commencement Date; and
 - (iii) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.


6. Acknowledgments

6.1 Crossfire acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Crossfire Motorcycles Pty Limited ACN 139 756 504 pursuant to section 127(1) of the *Corporations Act 2001* (Cth) by:


Signature of director
Vadim Shwartsfeld
Name of director (print)
06/12/2021
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

6 December 2021

Date

and signed on behalf of the Commission:



Chairman

6 December 2021

Date

Annexure A

COMPLIANCE PROGRAM

Crossfire will establish a Compliance Program that complies with each of the following requirements:

Training

1. Within 4 months of the Commencement Date, and thereafter at least once a year for 3 years, the following persons will attend ACL practical training more broadly, with a focus on the Safety Standard and section 106 the ACL:
 - (a) Vadim Shvartsfeld, sole Director of Crossfire; and
 - (b) any other person who may be employed by Crossfire during the Term whose duties could reasonably result in them being concerned with conduct that may contravene the Safety Standard or the ACL.
2. Crossfire will ensure that the training referred to in paragraph 1 above is administered by any one or more suitably qualified compliance professionals or legal practitioners with expertise in competition and consumer law (**the Trainer(s)**).

Complaints handling

3. Within 4 months of the Commencement Date, Crossfire will develop and implement procedures for recording, storing and responding to competition and consumer law complaints.

Product safety

4. Crossfire will maintain up-to-date copies, at its business premises, of all consumer product safety standards and consumer information standards made or declared under the ACL that relate to products Crossfire supplies, including the Safety Standard, from the Commencement Date and for the Term of the Undertaking.
5. Crossfire will develop, implement and maintain recall procedures to enable Crossfire to efficiently and effectively recall products.
6. In the event of any material change in the design or manufacture of any existing Quad Bike model or the introduction of any new Quad Bike model to which the Safety Standard applies, Crossfire will, prior to supplying any such Quad Bike model, obtain an independent testing report (or reports) as to the Quad Bike model's compliance with the Safety Standard.
7. Crossfire will seek to engage a suitably qualified compliance professional (**the Auditor**) to undertake an annual audit and visual inspection of each Quad Bike model supplied by Crossfire and to provide a report certifying whether, based on the audit and inspection, each Quad Bike model continues to comply with the Safety Standard. Crossfire will seek to conduct the first audit within 9 months of the Commencement Date. For the purposes of the audit and inspection, Crossfire will make available to the Auditor all documents and any other things reasonably requested by the Auditor and provide any reasonable assistance requested by the Auditor. For the avoidance of doubt, functional tests (including speed and brake

testing) shall not be required for the purposes of this paragraph 7 unless, in the opinion of the Auditor, the audit and visual inspection indicates there may be differences to previously tested models such that functional tests are reasonably necessary to certify that each model continues to comply with the Safety Standard.

Provision of Compliance Program documents to the ACCC

8. Crossfire will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date.
9. Crossfire will seek to ensure the following documents are provided to the ACCC:
 - (a) a written statement or certificate from the Trainer(s) who conducts the training referred to in paragraph 1 of the Compliance Program, verifying that such training has occurred, the dates it occurred and a summary of the content of the training within 14 days of the receipt of the statement or certificate from the Trainer(s). Crossfire will seek to ensure that the written statement or certificate from the Trainer(s) is provided to Crossfire within 14 days of the conclusion of the training;
 - (b) to the extent not already provided and for all Quad Bike models that are required to comply with Part 3 of the Safety Standard:
 - (i) a copy of independent testing reports from a third party testing agency, accompanied by
 - (ii) a signed declaration as to compliance with the Safety Standard by the Director,

within 30 days of receipt of the testing reports from the third party testing agency. Crossfire will seek to ensure the testing reports are completed by the third party testing agency as soon as practicable and by no later than 11 April 2022; and
 - (c) Auditor's reports referred to in paragraph 7 of the Compliance Program within 30 days of receipt from the Auditor.
10. If requested by the ACCC during the Term of the Undertaking or 5 years from the Commencement Date, Crossfire will, at its own expense and on request by the ACCC, cause to be produced and provided to the ACCC (other than, for the avoidance of doubt, any documents the subject of a privilege claim), within 30 days of receiving a request:
 - (a) copies of all documents constituting the Compliance Program, including:
 - (i) an outline of the complaints handling system referred to in paragraph 3 of the Compliance Program; and
 - (ii) an outline of the recall procedures referred to in paragraph 5 of the Compliance Program;
 - (b) documents in Crossfire's possession or information relevant to the implementation and conduct of the Recall reasonably requested by the ACCC; and

- (c) other documents in Crossfire's possession or information relevant to Crossfire's compliance with the Safety Standard reasonably requested by the ACCC.