



UNDERTAKING
Australian Consumer Law (SA)
Section 218

Undertaking to the Commissioner for Consumer Affairs given for the purposes of section 218 of the *Australian Consumer Law (SA)* by:

Motoworks Australia Pty Ltd, ACN 118 582 835, and
Mr Bo Ren

1. PERSONS GIVING THIS UNDERTAKING

1.1. This Undertaking is given to the Commissioner for Consumer Affairs ("the Commissioner") by Motoworks Australia Pty Ltd and Bo Ren, in the State of South Australia for the purposes of section 218 of the *Australian Consumer Law (SA)* ("the ACL"), which is adopted by the *Fair Trading Act 1987*.

2. BACKGROUND

2.1. Motoworks Australia Pty Ltd, ACN 118 582 835, supplies quad bikes to various retailers around Australia and to consumers through the website www.motoworks.com.au.

2.2. Bo Ren is the sole director of Motoworks Australia Pty Ltd and has held the position of sole director since 2006.

2.3. In March 2021, Consumer and Business Services ("CBS") issued Motoworks Australia Pty Ltd with a written warning for alleged non-compliance with the *Consumer Goods (Quad Bikes) Safety Standard 2019* ("the Safety Standard"). The alleged non-compliance related to the supply of a Motoworks QWATV-02 quad bike, which did not bear the information required in accordance with the Safety Standard.

2.4. In February 2022, CBS Officers conducted an inspection of the quad bikes available at a South Australian retailer, which included quad bikes supplied by Motoworks Australia Pty Ltd. CBS Officers identified alleged non-compliance with the requirements of the Safety Standard by Motoworks Australia Pty Ltd.

3. RELEVANT PROVISIONS

3.1. Section 106 of the ACL prohibits a person in trade or commerce from supplying, offering for supply, or manufacturing, possessing or having control of, consumer goods of a particular kind if a safety standard for goods of that kind is in force; and the goods do not comply with that standard.

3.2. *Consumer Goods (Quad Bikes) Safety Standard 2019* is the applicable safety standard.

4. CONDUCT OF CONCERN

4.1. On 15 February 2022, CBS Officers inspected the quad bikes available for sale at a South Australian retailer against the visibly assessable requirements of the Safety Standard. The

inspection included the following quad bikes supplied by Motoworks Australia Pty Ltd: 110cc sport, 125cc sport, 125cc farm.

- 4.2. The 110cc sport, 125cc sport, 125cc farm quad bikes are captured within the scope of the Safety Standard.
- 4.3. Quad bikes must display an age label to indicate the minimum age required to operate the quad bike.
- 4.4. CBS Officers did not see age labels on any of the quad bikes supplied by Motoworks Australia Pty Ltd.
- 4.5. On 18 February 2022, a CBS Officer spoke with a representative of Motoworks Australia Pty Ltd. The CBS Officer alleged that the 110cc sport, 125cc sport, 125cc farm quad bikes did not comply with the Safety Standard.
- 4.6. The representative of Motoworks Australia Pty Ltd:
 - 4.6.1. Identified the shipments where the age labels were not affixed to the quad bikes and arranged for the appropriate age labels to be produced and distributed to retailers of the relevant 110cc sport, 125cc sport, 125cc farm quad bikes.
 - 4.6.2. Advised that the age label and wording to advise of the appropriate minimum age is prominently displayed on the front page of the instruction manual, provided with each Motoworks quad bike with the assembly instructions.
 - 4.6.3. Supplied CBS with evidence to support his allegation that the 110cc sport, 125cc sport, 125cc farm quad bikes complied with the remaining requirements of the Safety Standard.
 - 4.6.4. Advised that measures were put in place to prevent this issue from re-occurring, including batch checking quad bikes received from the overseas supplier to ensure that the required age labels and other mandatory information is provided.

5. CONTRAVENTIONS

- 5.1. The Commissioner considers, and Motoworks Australia Pty Ltd acknowledges, that by engaging in the conduct described in paragraph 4 above, it is likely that Motoworks Australia Pty Ltd has:
 - 5.1.1. Supplied quad bikes that did not comply with a safety standard, and thereby contravened section 106(1) of the ACL.
 - 5.1.2. Offered quad bikes for supply that did not comply with a safety standard, and thereby contravened section 106(2) of the ACL.
 - 5.1.3. Possessed and had control of quad bikes that did not comply with a safety standard, and thereby contravened section 106(3) of the ACL.
- 5.2. The Commissioner considers, and Mr Bo Ren acknowledges, that it is likely that he aided, abetted, counselled or procured Motoworks Australia Pty Ltd to contravene the provisions outlined at 5.1.1 to 5.1.3 above.

6. COMMENCEMENT OF UNDERTAKING

- 6.1. This Undertaking comes into effect when:
 - 6.1.1. The Undertaking is executed by Motoworks Australia Pty Ltd and Mr Bo Ren.
 - 6.1.2. The Commissioner accepts the Undertaking so executed.

7. UNDERTAKINGS GIVEN FOR THE PURPOSES OF SECTION 218 OF THE ACL

7.1. Motoworks Australia Pty Ltd gives the following undertakings to the Commissioner for the purposes of section 218 of the ACL:

- 7.1.1. Motoworks Australia Pty Ltd will not supply, offer for supply or possess/have control of goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.
- 7.1.2. Motoworks Australia Pty Ltd will implement a written product safety compliance program within three (3) months from the date of this Undertaking, to ensure that:
 - 7.1.2.1. New stock does not get offered or otherwise advertised for sale until Motoworks Australia Pty Ltd is satisfied that it is not in breach of safety standards, information standards, or bans under the ACL.
 - 7.1.2.2. Current stock is regularly audited to ensure that it is not in breach of safety standards, information standards, or bans under the ACL.
 - 7.1.2.3. Motoworks Australia Pty Ltd will nominate a person responsible for the implementation and maintenance of the product safety compliance program.
 - 7.1.2.4. Motoworks Australia Pty Ltd will implement and conduct training for relevant staff within four (4) months of signing this Undertaking, and then annually, to ensure that the product safety compliance program is understood and complied with.
 - 7.1.2.5. Motoworks Australia Pty Ltd will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 7.1.2.4 and provide this to CBS within one (1) month after the initial training has been completed.

7.2. Mr Bo Ren gives the following undertaking to the Commissioner for the purposes of section 218 of the ACL:

- 7.2.1. Mr Ren will not aid, abet, counsel or procure a person (including a company) to supply, offer for supply or possess/have control of goods that do not comply with an applicable safety or information standard, in accordance with the requirements of the ACL.

8. ACKNOWLEDGEMENTS

Motoworks Australia Pty Ltd and Mr Bo Ren acknowledge that:

- 8.1. CBS will make this Undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website.
- 8.2. The Australian Competition and Consumer Commission ("ACCC") may make this Undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety Australia website.
- 8.3. CBS may, from time to time, make public reference to the Undertaking including in news media statements and in CBS publications.
- 8.4. This Undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct.
- 8.5. This Undertaking may be produced to any Court in respect of any proceedings alleging any future contraventions of the ACL.

EXECUTED BY Motoworks Australia Pty Ltd and by Mr Bo Ren in his personal capacity



Signature – Bo Ren, Director

Date:

21/12/22

Signature of Witness



Name: Chi Zhang

Accepted by the Commissioner for Consumer Affairs (SA) pursuant to section 218 of the *Australian Consumer Law (SA)*.



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Commissioner for Consumer Affairs

Date: 12/1/23