



UNDERTAKING
Australian Consumer Law (SA)
Section 218

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

Garry Craig Rogers
ABN 74 283 989 273

1. PERSONS GIVING THIS UNDERTAKING

- 1.1. This Undertaking is given to the Commissioner for Consumer Affairs (SA) by Garry Craig Rogers, 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. Garry Craig Rogers is a natural person.
- 2.2. Mr Rogers holds a current second-hand vehicle dealer's licence, MVD 157062, trading as Thorngate Motor Co, located at 224 North East Road, Klemzig, South Australia, 5087.

3. RELEVANT PROVISIONS

- 3.1. Under section 122 of the ACL, the Commonwealth Minister issued a compulsory recall notice for vehicles fitted with defective Takata airbags.
- 3.2. *Consumer Goods (Motor Vehicles With Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (Compulsory Recall)* is the applicable recall notice.
- 3.3. The Compulsory Recall places requirements on vehicle manufacturers, dealers, importers and other suppliers to ensure that dangerous Takata airbags are located and replaced as quickly as possible.
- 3.4. Section 127(2) and 199(2) of the ACL state that if a recall notice for consumer goods is in force, a person must not, in trade or commerce, supply goods of the kind to which the notice relates.

4. CONDUCT OF CONCERN

- 4.1. In December 2018, Consumer and Business Services (CBS) received a complaint alleging that a consumer had purchased a second-hand vehicle which was captured by the Compulsory Recall, from Thorngate Motor Co.
- 4.2. Subsequent enquiries revealed that the vehicle was fitted with an affected Takata airbag inflator, and in accordance with the Compulsory Recall, should not have been sold by Mr Rogers.

- 4.3. CBS Officers accessed Thorngate Motor Co's online product listing and inspected all vehicles on offer for sale. CBS Officers identified a further three potential issues. These included two vehicles advertised for sale that were captured by an active recall and one vehicle advertised for sale that was captured by a future recall.
- 4.4. Mr Rogers was subsequently spoken to by a CBS Officer, at which time Mr Rogers stated that he would remove the two vehicles (as identified in section 4.3) from sale and advised that the third vehicle had been sold. Mr Rogers was advised to contact the consumer who purchased the sold vehicle as a matter of urgency. The CBS Officer advised Mr Rogers of his obligations under the Compulsory Recall, including how to check a vehicle to determine whether it is fitted with an affected Takata airbag inflator and captured by the Compulsory Recall.
- 4.5. On 14 August 2019, CBS Officers conducted an inspection of the vehicles advertised for sale at the trading premises of Thorngate Motor Co. CBS Officers identified one vehicle fitted with an affected Takata airbag inflator that was advertised for sale. CBS Officers subsequently seized two contracts of sale for vehicles that were fitted with affected Takata airbag inflators at the time of their sale. These vehicles were sold on 23 May 2019 and 26 June 2019.

5. CONTRAVENTIONS

- 5.1. The Commissioner for Consumer Affairs (SA) considers and Mr Rogers acknowledges that in respect of the vehicles sold in December 2018 and August 2019 it is likely Mr Rogers has contravened s 127(2) and 199(2) of the ACL.

6. COMMENCEMENT OF UNDERTAKING

- 6.1. This Undertaking comes into effect when:
 - 6.1.1. The Undertaking is executed by Mr Rogers.
 - 6.1.2. The Commissioner for Consumer Affairs (SA) accepts the Undertaking so executed.

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

- 7.1. Mr Rogers gives the following undertakings to the Commissioner for Consumer Affairs (SA) for the purposes of section 218 of the ACL:
 - 7.1.1. Mr Rogers will immediately cease advertising any vehicle(s) subject to active recall under the Compulsory Recall for sale and refrain from advertising such vehicles for sale in the future.
 - 7.1.2. Mr Rogers will not supply vehicles captured by the Compulsory Recall unless the affected Takata airbag inflators have been replaced in accordance with the requirements of the Compulsory Recall and the ACL.
 - 7.1.3. Mr Rogers will implement a written product safety compliance program within 28 days from the date of this Undertaking, to ensure that:
 - 7.1.3.1. New stock does not get offered or otherwise advertised for sale until Mr Rogers is satisfied that it is not the subject of or in breach of a compulsory recall.
 - 7.1.3.2. Current stock is regularly audited to ensure that it is not supplied or offered for supply in breach of a compulsory recall.
 - 7.1.4. Mr Rogers will be responsible for the implementation and maintenance of the product safety compliance program.

7.1.5. Mr Rogers will implement and conduct training for relevant staff within two (2) months of signing this Undertaking, and then annually, to ensure that the product safety compliance program is understood and complied with.

7.1.6. Mr Rogers will maintain a register of staff signatures to confirm that they have undertaken the training mentioned in 7.1.5 and provide this to CBS within one (1) month after the initial training has been completed.

8. ACKNOWLEDGEMENTS

Mr Rogers acknowledges that:

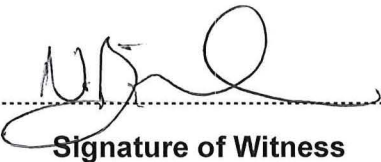
- 8.1. This Undertaking is not confidential. CBS will make this Undertaking publicly available including by publishing it on CBS' public register of Undertakings on its website.
- 8.2. The ACCC may make this Undertaking publicly available by publishing it on the ACCC website and the ACCC Product Safety 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 Mr Garry Craig Rogers


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Signature (Garry Craig Rogers)


Date: 30-7-20


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Signature of Witness

Name: Nicole Barile

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 (SA)

Date: 30/7/20