



Trade Practices Newsletter

October 2008

>>Misleading conduct: It's not easy being green!

>>Saab in trouble

Saab has accepted that some of its advertisements as to its green credentials were misleading.



The ads claimed that carbon emissions from the advertised Saab vehicle would be neutral over the life of the vehicle, because 17 native

trees would be planted to offset carbon dioxide emissions for the life of the car. However, in fact the emissions would not be neutral over the car's lifetime: 17 trees would only offset the emissions from operation for one year.

Saab agreed to a settlement with the ACCC, which was accepted by the Federal Court. Saab agreed to retrain its marketing staff on making green claims, and promised to plant 12,500 native trees (equal to the number of cars sold during the campaign).

>>V8 Supercars in trouble too

V8 Supercars introduced a Racing Green Program which claimed that planting 10,000 native trees would fully offset carbon emissions from the V8 Championship Series, including the races themselves, transport of the racing teams and related air travel and other activities.

The ACCC objected because the claim suggested that trees would absorb the carbon emissions in a short time, when in fact it would

take decades for newly planted trees to absorb the emissions from a year's racing. The ACCC argued that the marketing should make clear that the absorption would take place over the lifetime of the trees.

V8 Supercars gave the ACCC undertakings to have its green marketing vetted by a trade practices lawyer, to be clear in any future claims of this kind about time frame for offset, and to publicise the issues on its website.

The moral from these stories is that making green representations is fraught with peril because it is difficult to justify in precise terms, any generalised marketing claim of this nature. The ACCC has published detailed guidelines to assist businesses wanting to make environmental claims. The guidelines leave substantial room for judgement in particular cases

If you are considering making green marketing claims it is worthwhile having an independent and objective pair of eyes consider your marketing material before taking the risk.

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>>Misleading conduct: A squid by any other name ...



A supplier of seafood products marketing crumbed seafood rings under the brand name "Kalamari".

The ACCC objected to this because it suggested that the rings were made predominately of calamari or squid, whereas in fact only 4% consisted of squid.

The supplier withdrew the packaging, dropped the product name and promised not to supply seafood products with labelling suggesting that the product had a significant proportion of a particular seafood ingredient when that was not so. It also agreed to publish corrective advertising and to implement trade practices compliance training.

This case illustrates the point that a misleading impression created by any feature of marketing or packaging, creates a trade practices problem, even if ingredients lists or other small print gives the full picture. It is the overall impression which matters.

You should have all promotional material checked by someone (in-house or external) not involved in its preparation, who can comment independently on the impression it gives. Those who have prepared the material, or are close to that process, are often blindsided to other possible meanings.

If you need assistance vetting marketing material, contact:

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>> Keeping up to date with amendments to the Trade Practices Act

The state of play with various proposals to amend the Act is:

Criminalising cartel behaviour: Draft legislation to do this, including **imprisonment** as a penalty option, has been released for comment, but has not yet been introduced into Parliament.

Misuse of market power and fixing the “Birdsville” amendments: This legislation failed to get through the Senate on the first try, and is presently being re-submitted to the Senate with some of the amendments sought by the Opposition and small party senators being accepted, and some rejected.

This legislation is intended to bolster the ACCC’s power to pursue misuse of market power under section 46 of the Act in the interests of small business, particularly in relation to **predatory pricing**. It also rectifies some of the odd features of the

“Birdsville” amendments sponsored by Senator Joyce in 2007. The issue in dispute is the degree to which the amendments provide protection for small business, and whether that protection would be improved by the Opposition’s proposed amendments.

Clarity in pricing: If passed, this bill will amend the Act to require sellers to provide to consumers a single comprehensive price for goods or services. The objective is to prevent **“component pricing”** where the price of one component is advertised without disclosing the prices of other necessary components of the goods or services. This bill is currently progressing through Parliament.

If you need information on how any of these changes may apply to your business, contact:

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