Australian Competition & Consumer Commission

update

Quarterly news from the
Australian Competition & Consumer Commission

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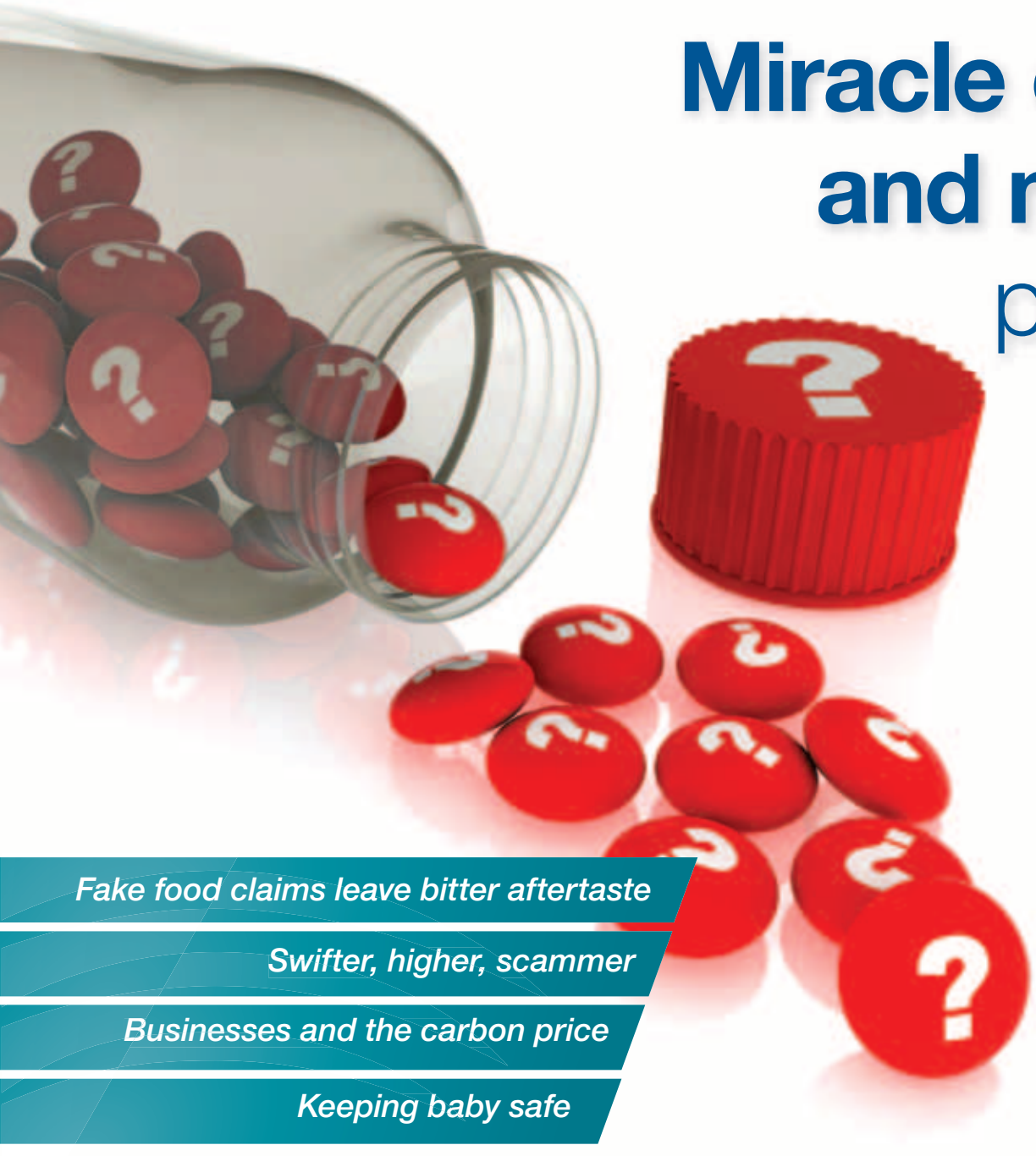
Miracle cures and magic potions



Fake food claims leave bitter aftertaste

Swifter, higher, scammer

Businesses and the carbon price

Keeping baby safe

Waiting for Google

The Full Federal Court this month upheld the ACCC's appeal against Google and declared that Google had engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in relation to the publication of certain advertisements appearing on the search results page of Google Australia's website.

Google's conduct involved the use by an advertiser of a competitor's name as a keyword triggering an advertisement for the advertiser with a matching headline.

When a user clicked on the headline, they were taken to the advertiser's website. The ACCC alleged that the ads contained representations that, in summary, by clicking on the headline, users would find information on the competitor's business.

The court at the first instance found that although a number of advertisements were misleading or deceptive, Google had not made those representations, it had merely communicated representations made by the advertiser. As such, the court ruled that Google had not breached the Trade Practices Act.

The ACCC appealed the primary judge's decision in relation to four of the 11 ads originally pleaded at the first instance. The central issue was whether the primary judge erred in finding that Google did not 'make' the representations contained in the four ads that were the subject of the ACCC's appeal.

In upholding the ACCC's appeal, the Full Court concluded that Google created the message through its technology in response to the user's search query and did not merely repeat or pass on a statement by the advertiser.

The Full Court stated that 'the enquiry is made of Google and it is Google's response which is misleading... Although the keywords are selected by the advertiser, perhaps with input by Google, what is critical to the process is the triggering of the link by Google using its algorithms.'

The court said Google's actions were likely to mislead or deceive a consumer searching for information on the competitor.

Breast check

The ACCC has instituted proceedings against two breast-imaging companies and their directors for alleged false and misleading conduct.

Safe Breast Imaging and its director Joanne Firth, and Breast Check and Dr Alexandra Boyd, are alleged to have used a device known as the Multifrequency Electrical Impedance Mammograph to capture images of a customer's breasts. Breast Check also used a digital infrared thermographic camera to capture images.

The companies claimed the services they provided were an effective means of assessing whether a customer was at risk from breast cancer and the level of that risk, and could assure a customer that they did not have breast cancer.

They were also claimed to be an effective substitute for mammography services. The ACCC alleges these representations were false.

The ACCC also alleges that between May 2009 and August 2011 Safe Breast Imaging falsely represented that its breast imaging service included the provision of a customer report prepared by a medical doctor.

Damage to the pocket

The ACCC has instituted proceedings against BAJV Pty Ltd, trading as Europcar in Tasmania, alleging misleading and deceptive conduct and unconscionable conduct in relation to damage charges for hire cars.

The ACCC alleges that BAJV overcharged customers for damage sustained to its hire cars and subsequently did not refund customers the overcharged amounts.

The ACCC also alleges that managing director Brendon Ayers and fleet controller Teressa Carr were involved in the alleged conduct.

Safety claims an issue

The ACCC has accepted court-enforceable undertakings from Australian Workplace Services (AWS) and its director, John O'Halloran, over misrepresentations made to small businesses about the need for AWS's products.

From at least October 2009 AWS made false or misleading representations to small businesses through the use of prepared scripts in the course of selling or promoting its safety products.

These claimed that the relevant state workplace safety laws required businesses to maintain workplace safety charts of the same nature as those supplied by AWS, when in fact there was no such requirement.

'It is inappropriate and unacceptable to misrepresent to small businesses that they are legally obliged to maintain or purchase such items,' ACCC Deputy Chair Dr Michael Schaper said.

AWS cooperated with the ACCC's investigation and took steps to address its concerns, including giving to the ACCC a court-enforceable undertaking that it will not make such claims in future and will publish a corrective notice on its website.