

A newsletter for consumers and the consumer movement

## What's news

### ACCC defends the rights of Playstation owners

The ACCC has intervened in a case currently before the Federal Court in a bid to open up the games market for consumers with Sony Playstations. Sony has instituted a copyright case to limit the installation of chips that allow games with regional coding to be played on consoles bought in Australia.

The ACCC fears that if Sony is successful in the court action, consumers stand to lose money on games bought overseas much more cheaply by being denied the right to use them in Australia. If the ACCC's argument is accepted in the Federal Court it will mean Playstation users can continue to rightly enjoy unrestricted use of the goods they own.

Chairman of the ACCC, Professor Allan Fels said: 'Consumers' interests are best served by ensuring access to the widest possible range of goods at the most competitive prices. Sony has overridden this basic consumer right by creating and maintaining artificial barriers to trade that the ACCC claims are not warranted by the law.'

Sony Computer Entertainment Australia and related companies are seeking to have new provisions of the *Copyright Act 1968* applied to prevent consumers from having the region coding in their Playstation consoles modified. The device, which modifies region coding, is called a 'mod chip' and once installed, permits the use of imported Playstation games and legitimate backup copies.

A similar problem exists with DVDs. The ACCC has been investigating the regional playback control (RPC) technology present in DVD players and accompanying films. The ACCC is aware that RPC effectively divides the world into six regions for the purposes of DVD distribution, preventing inter-region substitution of discs and hardware. The practical effect is that a consumer who has bought a DVD player in Australia may be prevented from playing films obtained overseas. Overseas markets give Australian consumers access to a wider range of competitively priced film titles, with special features not otherwise available in Australia. In the ACCC's view, this means Australian consumers are forced to pay higher prices for films with fewer features and a more limited range of titles.

More information: [Media release MR 22/02](#), 8 February 2002

### ACCC examines Telstra's new Internet pricing

The ACCC has received many queries from consumers about Telstra's recently announced pricing changes for its BigPond broadband and narrowband Internet services. These changes were announced on 1 February to be implemented on 1 March.

The ACCC has a limited role in relation to these changes, as it cannot set retail Internet service prices or make Telstra offer products at certain prices.

However, given Telstra's position as Australia's largest ISP, its resultant market power and the lack of available alternative broadband services, **the ACCC will examine these proposals closely** to ensure that no breach of the Trade Practices Act has occurred.

More information: <http://www.accc.gov.au>

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## In the consumers' interest

### When can you get a refund?

Many consumers and businesses are confused about what their warranty rights and obligations are under law. Basically, when a consumer buys goods or services a statutory warranty is implied, regardless of cost etc. Statutory warranties cannot be overwritten or signed away. They give the consumer basic rights:

- that the goods are of merchantable quality;
- that the item is fit for the purpose it is intended for;
- that the item matches the description or sample given; and
- that services are carried out with due skill and care.

If the consumer has problems with an item, quite often a retailer will blame a manufacturer and vice versa. It is not up to the consumer to sort that dispute out. They are entitled to certain remedies and it is up to the businesses involved to negotiate who is responsible for absorbing the cost of a remedy.

It is wise for businesses to also remember that the Trade Practices Act prohibits a business from giving misleading information about warranties. For instance, a blanket 'No refund' sign will probably breach s. 53 (g) of the Act. It should be made clear however, that if consumers change their mind, or decide they do not like the product, or find the item cheaper elsewhere, they are unlikely to be able to claim a refund under law.

More information on warranties can be found in the easy to read publication, *Warranties and Refunds* at:

- <[http://www.accc.gov.au/pubs/Publications/Industry/Retail/Warranties\\_refunds\\_Dec2001.pdf](http://www.accc.gov.au/pubs/Publications/Industry/Retail/Warranties_refunds_Dec2001.pdf)>; or
- hard copy from ACCC offices on 1300 302 502.

## New publications

### GM foods must be labelled

New mandatory labelling requirements for genetically modified foods introduced in December 2001 will help consumers decide what food to buy.

The ACCC has published GM labelling guidelines for all businesses in the food supply chain.

All genetically modified food and ingredients need to be labeled with the statement "genetically modified" where the final food contains novel DNA and/or novel protein or where the foods characteristics have been altered. Manufacturers must be able to verify any claim. This may involve maintaining a clear paper trail about the manufacturing process for a food, or establishing an 'identity preservation' system to assure the content of a food.

The ACCC's role is to ensure that any information on which consumers are likely to base their decision to purchase is not misleading or deceptive.

More information: [Media release MR 5/02](#), 18 January 2002

## New guide for TCF industries

Developed in conjunction with industry and Government, this guide will help the textiles, clothing and footwear industries to make country of origin claims correctly.

More information:

- ACCC website [www.accc.gov.au](http://www.accc.gov.au) (free);
- contact the ACCC Publishing Unit for a hard copy on (02) 6243 1143; or
- [Media release MR 2/02](#), 17 January 2002

## From the infocentre Frequently asked questions!

### Can the ACCC set prices?

The ACCC's Infocentre receives many complaints about retail price rises, especially grocery items in supermarkets.

We hope that the following gives a better understanding of our role in pricing.

- The ACCC is not a price setting body for retail goods and services. In a free market economy such as Australia's, prices for goods and services are mostly determined by supply and demand.
- However, the ACCC does set the wholesale prices for a few services in telecommunications, gas, electricity and airports using powers given by the Trade Practices or Prices Surveillance Acts. These powers only apply to services or industries 'declared' by Parliament or the relevant Minister.
- Competitors who agree to fix prices amongst themselves may breach the Trade Practices Act and potentially face penalties up to \$10 million.
- Sometimes State or Territory Governments set the price consumers pay for essential products. The ACCC has no control over this.
- The ACCC cannot help consumers with general complaints about pricing. Consumers concerned about high prices are encouraged to discuss these with the store owner or manager. The ACCC encourages consumers to shop around for the best deal.
- The ACCC has a limited role to make sure that prices do not rise by more than 10% as a result of the New Tax System changes. This role will end on 30 June 2002.

## Recent Investigations

### Commodore Homes refund GST

The Federal Court has recently found that Commodore Homes (WA) Pty Ltd, a member of the Buckridge Group of companies, had engaged in false, misleading or deceptive conduct in breach of s. 52 and s. 53(e) of the Trade Practices Act.

The court found that Commodore Homes had misled new home-buyers about how long it would take to build their

new homes, and the application of GST to their home contracts.

The ACCC alleged that in the lead-up to the introduction of the GST, Commodore Homes told potential home-buyers that if they signed up they wouldn't have to pay GST, as the homes would be finished before the introduction of the GST on 1 July 2000. Delays in construction, however, meant many homes were not finished by that date. Commodore Homes then attempted to recover the GST component.

The Federal Court ordered, among other things, injunctions restraining Commodore Homes from engaging in such conduct for three years, and payment of costs.

This outcome reinforces the ACCC's message to business that GST enforcement objectives will continue to be a priority for the ACCC until the GST transition period expires on 30 June 2002.

More information: [Media release MR 25/02, 12 February 2002](#)

## Latest Developments

### Lower aeronautical charges required at Perth and Brisbane airports

The ACCC has required Perth and Brisbane airports to lower aeronautical charges to comply with price cap regulation. These are the prices charged by airports to airlines for services such as the use of runways, terminal facilities etc. The ACCC makes sure that declared services under the Prices Surveillance Act stay within their price cap.

Perth and Brisbane airports have not reduced aeronautical charges enough in recent years to meet the price cap. Because it is the last year of the price cap arrangements, the reduction in charges must occur this year.

More information: [Media release MR 27/02, 19 February 2002](#)

### ACCC supports amendment to the Trade Practices Act

The Australian Competition and Consumer Commission supports a Senate review of amendments to the misuse of market power section of the Trade Practices Act.

'The ACCC has initiated only a few actions under section 46 (misuse of market power) of the Act, with a major difficulty being in proving a proscribed purpose', ACCC Chairman, Professor Allan Fels, said today.

'Companies are now aware of the possible implications of creating "smoking gun" documents, even creating a "cover" of apparently legitimate substantial purposes to avoid court actions against allegations of misuse of market power.' The ACCC's submission reviews s. 46's operation and says a reversal of onus of proof as to purpose would be preferable to the way current s. 46 actions are proved before the courts.

In the ACCC's view, a better approach to the current one, would be to amend s. 46 so it focused more on the effect of the conduct in question.

Generally, misuse of market power is when one business with a substantial degree of market power, uses this power

to damage another business, prevent competition or prevent new players from gaining entry into the market. The ACCC has successfully taken action against businesses that have misused their market power in the past, most noticeably against Boral in Melbourne. Boral drastically reduced the prices of their products when a new and innovative player attempted to enter the market. Boral has taken the case to appeal.

More information:

[Media Release MR 35/01, 28 February 2001](#); and

[Media Release MR 30/02, 20 February 2002](#)

## News from afar

A US District Court Judge has ordered SkyBiz.Com Inc, which operates an alleged illegal pyramid scheme, to return millions of dollars being held in offshore accounts to preserve them for potential consumer redress, pending trial.

The ACCC has similar proceedings on foot against SkyBiz.Com Inc, following the ACCC's successful action last year against a Western Australian promoter. The ACCC has alleged SkyBiz.Com Inc has engaged in misleading and deceptive conduct and breached provisions outlawing pyramid selling, referral selling and income representations regarding home based business schemes.

It is alleged that SkyBiz.Com Inc, through its participants, claimed that consumers who joined the scheme, by purchasing a website for \$US100, could earn substantial income by recruiting new participants.

## About the ACCC Rural and Regional Program

The ACCC has developed a Rural and Regional Program to better inform businesses and consumers in regional Australia about their rights and obligations under the Trade Practices Act.

Regional Outreach Officers, or ROOs as they have come to be known, have been appointed to ACCC regional offices across Australia. They have been building on existing local contacts in communities to establish a local supporters network.

Local supporters, which include representatives of small business, local government and consumer associations, will supplement the work being done by ROOs. They will use their own network to spread information about the Trade Practices Act and will also be contact points for this information in their communities.

The Competing Fairly Forum satellite broadcasts form part of this program with the next broadcast scheduled for 21 May 2002. The focus will be on ways of settling disputes. For more information visit the forum website [www.forums.accc.gov.au](http://www.forums.accc.gov.au).

For more information on the Rural and Regional Program and local contacts in your area call the ACCC Infocentre on 1300 302 502

## New on the ACCC bookshelf

The ACCC has released the following publications in the past few months.

### Advertising and selling:

- Updated guide on the consumer protection provisions of the Trade Practices Act to ensure that businesses trade fairly with consumers. \$10

### Small business and the Trade Practices Act:

- Practical guide to the TPA for Australian small businesses.

### Textiles, clothing and footwear industries:

- Country of origin guidelines to the Trade Practices Act.

### The franchisees guide:

- Updated guide to the Franchising Code of Conduct.

### Small business leaflets about unconscionable conduct:

- Guaranteed a loan for someone? Lost your house?
- Are you happy with your retail tenancy lease?
- Bought a franchise without enough information?
- Do you supply goods or services to major retail chains?

### Franchising Code of Conduct Compliance Manual:

- Updated version, including amendments to the code. \$50

### Are you being harassed about debts?:

- Leaflet about what debt collectors can and cannot do.

### Warranties and refunds:

- Leaflet on small business' obligations about warranties and refunds for consumers.

### ACCC update 9:

- Free magazine — special consumers issue.

### ACCC Annual Report 2000-01 — \$15

### Product safety guide:

- children's nightwear.

### News for business:

- genetically modified foods.

The following Videos are also available (\$10 each).

### Competing Fairly Forum:

- proceedings from the 3<sup>rd</sup> forum in November 2001, featuring advertising and selling.

### Fair Game or Fair Go:

- understanding unconscionable conduct.

### Without fear or favour:

- short general video about the ACCC.

### Advertising and selling:

- training video derived from the Competing Fairly Forum (to be released soon).

## February media releases

- 28 Feb [ACCC Publishes Reasons for Harbour Towage Decision](#)
- 28 Feb [Airport Terminal Users Well Protected by Price Controls](#)
- 25 Feb [ACCC Approves Sydney Airport Apron Parking Charge](#)
- 22 Feb [ACCC Requires Divestment Undertaking From Manildra](#)
- 20 Feb [Adsteam's Proposed Price Increases Not Justified: ACCC](#)
- 20 Feb [ACCC Supports Amendment to Misuse of Market Power Provisions of Trade Practices Act](#)
- 19 Feb [ACCC & Safeway](#)
- 19 Feb [Lower Aeronautical Charges Required at Perth and Brisbane Airports](#)
- 18 Feb [ACCC Enhances Proposed Transmission Network Planning and Approval Processes](#)
- 12 Feb [Commodore Homes \(WA\) Pty Ltd Refund \\$880,000 to New Home Buyers](#)
- 8 Feb [ACCC not to Oppose Acquisition of Wreckair Hire Business by Coates Limited](#)
- 8 Feb [ACCC not to Intervene in OPSM Acquisition of Kays Optical](#)
- 8 Feb [ACCC Defends the Rights of Playstation Owners](#)
- 7 Feb [ACCC v Samton Holdings Pty Ltd & Others](#)
- 7 Feb [ACCC Institutes Against Wizard Mortgage Corporation Limited for Alleged Misleading Advertising](#)
- 5 Feb [No Evidence that Trade Practices Act Hinders Rural Doctors: ACCC](#)
- 5 Feb [Jet Motorcycle Helmet Recalled](#)
- 5 Feb [AXA/MBF Possible Merger](#)
- 1 Feb [Adsteam Submits New Harbour Towage Notification](#)

## Need more information? Want to subscribe?

The ACCC's media releases and other useful information can be found on our website at [www.accc.gov.au](http://www.accc.gov.au). Or call the ACCC infocentre on 1300 302 502. You can receive *ACCC consumer express* for free by sending an e-mail to [express@acc.gov.au](mailto:express@acc.gov.au). Put 'subscribe' in the subject line and we'll do the rest.

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## What's news

### Record companies penalised \$1 million

Penalties totalling more than \$1 million were imposed on Universal Music Australia Pty Ltd, Warner Music Australia Pty Ltd and senior company executives in the Federal Court on 6 March 2002.

They were found to have breached sections 46 and 47 of the *Trade Practices Act 1974* by refusing to supply (or threatening to) CDs to Australian retailers who stocked non-infringing parallel imported CDs.

The ACCC began its investigation in 1998 after receiving complaints about the companies. In several cases it was alleged that Warner and Universal had cut off supply to retailers who stocked parallel imports. The ACCC alleged that this conduct prevented or discouraged Australian businesses from selling competitively priced imports.

Every major record company (including Warner and Universal) retains exclusive rights to the music which forms its catalogue. Within each catalogue a company is likely to have top selling titles featured in the charts. For most consumers specific titles can't be substituted. It is therefore commercially imperative for a music retailer to retain access to major companies' catalogues. Retailers denied supply may not be able to obtain music from the companies' catalogue either locally or overseas at an economic price, on time, or at all.

In their defence Universal and Warner claimed that competition from these cheaper, imported CDs would drive down their profits. However, the Federal Court found that Universal and Warner tried to stop alternative, imported supplies of non-infringing recordings of titles in their catalogues.

In fact, the court found the dire predictions of reduced promotion through to reduced production and ultimate market failure had simply not occurred. If anything, the evidence shows a continued increase in titles, promotion and production and at lower prices.

The ACCC is very pleased with the outcome of this case as it establishes an important precedent and win for Australian consumers. Retailers may now freely access cheaper, legal, imported CDs without fear that they'll lose supply of alternative stock. Universal and Warner are now permanently restrained from refusing, or threatening to refuse, supply of recorded music CDs to Australian retailers who source non-infringing titles already featured in their catalogues.

More information: [MR 39/02 6 March 2002](#)

### Insurance report released

The ACCC has just released its draft report into the insurance industry requested by the former Minister for Financial Services and Regulation, Joe Hockey. The ACCC received submissions from interested parties, including consumers and industry groups and requested information from insurers in relation to premium rates in the insurance industry.

ACCC Chairman Professor Fels, commenting on the report, *Insurance industry and market pricing review* said 'Consumers need to know exactly why prices for particular policies have risen, so they can make informed decisions about policy renewal'.

The report says that general insurance customers need clear information about increased charges for their individual insurance policies.

The ACCC report provided important input into the debate on the cost drivers for public liability insurance considered at the March Ministerial meeting held in Canberra.

The ACCC welcomes the Government's decision that it continues to update the report, and by July 2002, provide analysis of competitiveness of the public liability and professional indemnity sectors of the market.

The ACCC is concerned that large across-the-board premium increases, over that of general inflation, were attributed solely to the collapse of HIH Insurance and the events of 11 September 2001. The ACCC believes such opportunistic pricing could not continue in a competitive market. It is not advocating price controls on general insurance but believes companies should not try to justify

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price rises by using external factors rather than admitting past management mistakes.

The report noted that some sectors of the general insurance industry had low return on equity over the past nine years.

However, insurance companies should review and improve their inquiry and complaints handling systems to help consumers who wish to query increases.

The ACCC suggests that companies' review the language used in insurance contracts to demystify the process for consumers, small business and community organisations. Consumers will benefit from being able to choose a policy that best suits their needs, while insurers, by providing the most competitive services, should attract more customers.

The ACCC believes that consumers should receive policy renewals in time for any queries arising from the terms and conditions to be effectively dealt with without risk to their policy coverage.

More information: [MR 60/02 26 March 2002](#)

## ACCC runs out of patience with Telstra

A competition notice issued by the ACCC to Telstra in September last year came into force on 21 March. Since late last year the ACCC believed that Telstra was engaging in anti-competitive conduct in the way it treated its wholesale broadband customers. As of 21 March, competitors can seek damages from Telstra, and the ACCC can take action against Telstra in the Federal Court to obtain penalties.

'The ACCC put Telstra on notice last year that if it continued to refuse to provide the services that its competitors required to compete fairly with the Telstra BigPond products, Telstra would be exposed to significant penalties under the *Trade Practices Act*', said ACCC Chairman, Professor Allan Fels.

The ACCC sees the existence of competitive wholesale offerings as an important aspect of increased choice of broadband solutions; especially for residential consumers seeking access to high speed Internet services.

More information: [MR 51/02 21 March 2002](#)

## In the consumers' interest

### Competition will lift TV efficiency

There was no inherent conflict between competition policy and legitimate cultural assistance, ACCC Chairman, Professor Allan Fels, told the Australian Children's Television Foundation's 20th anniversary symposium held recently.

He said applying competition policy to broadcasting would not destroy social and cultural objectives.

However, he warned that a regulatory regime, which was introduced to achieve higher quality children's programming, may be misdirected and/or inefficient.

'Production quotas are likely to bias the programming towards quantity rather than quality', he said.

Professor Fels said 'allowing new competition into free-to-air television would not necessarily mean the end of local content.

'New entry could be made conditional on meeting the domestic content requirements set by the government. If the Australian market is too small to support a larger number of broadcasters complying with the content requirements, then some will fail. But this happens in any other industry.

'If the market could support only three commercial networks it may be that the new entrants could meet the content requirements more efficiently than the incumbents.

'The current regulatory arrangements are contrary to effective competition policy and protect the existing networks at a considerable, and hidden, cost to the community in terms of reduced program choice and higher cost for advertisers.'

More information: [MR 52/02 21 March 2002](#)

## From the Infocentre

### Don't be fooled by mail scams

Following the recent actions in Queensland and Western Australian to halt mail scams, it is timely to remind consumers to be alert to the mail scams operated from Australia and overseas.

Often people don't realise they have been swindled, or will not admit they have been the victim of a scam because they are embarrassed. Mail scams tend to involve small amounts of money; \$20 to \$40 on average. While an individual may chalk it up to a relatively inexpensive experience, scams are big business.

If you receive an unsolicited letter in the mail or an email, you should ask yourself a few questions:

- If it says you have won a lottery, ask yourself: Did I enter a lottery? If I haven't entered a lottery, how did I manage to win one?
- If it says you need to send money to collect a cash prize, ask yourself: Why do I need to send money if they have all of those winnings the lottery operators can take their fee out of? A good response to this type of letter is to send a letter authorising the company to deduct their fee from your winnings.
- Remember the Nigerian scam? It's still going around — why would someone want to give you millions of dollars just for the use of your bank account? This scam has been going for some years and is now pursued through email.
- Ask yourself: Is it too good to be true? If it sounds too good to be true it probably is.

If you are taken by a scam, you may find yourself on a 'suckers' list, which will mean you will constantly receive 'announcements' of lottery and prize winnings.

If you receive a letter that doesn't look legitimate, you have a number of options:

- You could check the scamwatch website to see if anything similar is listed at <http://www.scamwatch.gov.au>.

- You could read the *Little Black Book of Scams* published by the Ministerial Council of Consumer Affairs and available at <[www.scamwatch.gov.au](http://www.scamwatch.gov.au)>.
- You could throw it in the bin.

If you have been the victim of a mail scam it may be difficult to recover your money. However, it is always a good idea to notify the ACCC on 1300 302 502 and your local fair trading authority.

## Recent investigations

### ACCC defends market gardeners

Action by the ACCC has led to five Vietnamese market gardeners winning a dispute with their landlord who had tried to deny their lease and irrigation rights.

The lessees were Vietnamese farmers with little formal education or knowledge of English.

In 1994 Avanti entered into agreements with two farmers to lease the land. This land was then sublet to five other farmers, who were the victims. Four years later Avanti unlawfully claimed a right to break and vary the leases, and in 1998 and 1999 made the farmers sign new leases which each time reduced the amount of water available. The farmers were also told that the leases were the same as the 1994 lease except for the rent and the terms.

The court declared that Avanti had engaged in unconscionable conduct in breach of section 51AC of the *Trade Practices Act*, misleading or deceptive conduct in breach of section 52 and made false or misleading representations about the land leased by the farmers, in breach of section 53A.

More information: [MR 37/02](#) 5 March 2002

### Better protection for small business

Small businesses are better protected from misleading demands over Internet re-registrations, after an action by the ACCC. The Federal Court in Brisbane has declared that conduct by Mr Stephen Henry Wayt, the proprietor of COM.AU.REGISTER breached the *Trade Practices Act*.

The ACCC had alleged that between January and March last year, COM.AU.REGISTER sent businesses and organisations throughout Australia a fax that was likely to mislead recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain names when it did not and could not provide that service. The ACCC also alleged that some of the statements on COM.AU.REGISTER's Internet site were likely to be misleading.

Any business which believes they were misled and have not yet received a refund should contact the ACCC Infocentre on 1300 302 502.

More information: [MR 43/02](#) 8 March 2002

## ACCC stops rip-off

Small business scamsters John Moon (a.k.a. John Robert Croke) and Wayne Baker, and their two companies, Back to Basics Worldwide Education Aids Systems Pty and Hartwich Pty Ltd, were recently convicted for a total of 16 counts of breaching the *Trade Practices Act*. The court found they had made false representations by inviting investors to buy distributorships selling educational aids to primary schools, and ordered fines and compensation of \$726 000.

The offenders operated in four States and placed advertisements in *The Age*, *The Sydney Morning Herald*, and *The Advertiser*. At least seven distributors, mainly married couples, were recruited and invested up to \$65 000. In every case their businesses failed and they lost their money.

Both men pleaded guilty before the Federal Court in Brisbane in March 2001. On 20 March 2002 the court handed down default judgment against the companies including fines and compensation.

More information: [MR 52/02](#) 21 March 2002

## Latest developments

### ACCC takes Arnolds to court

The ACCC has instituted proceedings in the Federal Court in Sydney against Arnolds Ribs & Pizza Australia Pty Ltd. The ACCC alleges the company, its four directors and its Queensland master franchisee, have engaged in misleading, deceptive and unconscionable conduct in promoting its fast food franchise system.

The ACCC is seeking court orders including:

- declarations that Arnolds has breached sections 52, 59(2) and 51AC of the Act;
- injunctions;
- findings of fact; and
- costs.

'It is important to note in relation to this matter, the ACCC action is against the franchisor corporation and five associated individuals arising out of the sale of Arnolds franchises. This action does not involve any conduct on the part of Arnolds store owners in their dealings with their customers', ACCC Chairman, Professor Allan Fels, said.

More information: [MR 56/02](#) 22 March 2002

### Proposed merger given the nod

The ACCC won't intervene in the proposed merger between Hewlett-Packard and Compaq.

Hewlett-Packard provides computers, imaging products and services in over 120 countries worldwide. Compaq provides similar products and services and operates in 200 countries.

The ACCC's investigation of the proposal concluded that the merger wouldn't substantially lessen competition in any market. The merged entity will continue to face competition from several established suppliers, including IBM, Sun and Dell.

More information: [MR 47/02](#) 13 March 2002

## About the ACCC — adjudication

One of the objectives of the Trade Practices Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency and enhancing consumer choice on price, quality and service. However, the ACCC also recognises that there are some circumstances where conduct that may restrict competition may also result in a public benefit.

Under the Trade Practices Act, the ACCC has the power to grant immunity from prosecution on public benefit grounds for some conduct which might otherwise breach certain competitive conduct provisions of the Act. Immunity is not available from the consumer protection provisions of the Act or from the misuse of market power provisions.

Decisions to grant immunity are made by the full Commission and the ACCC's Adjudication Branch is responsible for processing applications.

Immunity from prosecution can only be granted if the conduct will result in a benefit to the public and that benefit will outweigh any anti competitive detriment. When considering applications for immunity, the ACCC asks interested parties for submissions.

Individuals or organisations with sufficient interest may ask the Australian Competition Tribunal to review the ACCC's decision.

More information about the ACCC's adjudication function as well as applications currently before the Commission can be found on the ACCC's website <<http://www.accc.gov.au>>.

## March media releases

- 31 Mar [Further Call to Whistleblower](#)
- 28 Mar [Easter Petrol Prices](#)
- 27 Mar [ACCC Institutes Against Waterman Collections Pty Ltd for Alleged Misleading and Deceptive Conduct](#)
- 26 Mar [ACCC Takes Court Action Against Cadbury Schweppes Over Cottee's Cordial Labelling](#)
- 26 Mar [Federal Court Denies Medibank Private's Motion to Strike Out ACCC Case](#)
- 26 Mar [Consumers Need Clear Insurance Information: ACCC](#)
- 25 Mar [Internet Access Charge Details Issued by ACCC](#)
- 24 Mar [Court Agrees that Door-to-Door Sellers Illegally 'Slammed' Telephone Customers](#)
- 22 Mar [ACCC Views on Easter Petrol Prices](#)
- 22 Mar [ACCC Improves National Electricity Code Dispute Resolution Processes](#)
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- 21 Mar [No Inherent Conflict Between Competition Policy and Legitimate Cultural Assistance: ACCC](#)

- 21 Mar [ACCC Stops 'Business Opportunity' Rip-Off](#)
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- 13 Mar [ACCC not to Intervene in the Proposed Merger Between Hewlett-Packard and Compaq](#)
- 12 Mar [Regulators Co-operate to Improve Privacy Compliance](#)
- 8 Mar [Federal Court Orders Following ACCC Action Assists Small Businesses Regarding Internet Registration](#)
- 7 Mar [ACCC Proposes to Allow Sydney Councils to Collectively Bargain with Recycling Facilities](#)
- 7 Mar [ACCC Maintains Price Rises for Harbour Towing Not Justified](#)
- 7 Mar [Roller Shutter Company Ordered to Refund Franchisees \\$77,594](#)
- 6 Mar [Threats to C.D. Supplies Cost Record Companies \\$1M](#)
- 5 Mar [Release of Foxtel Channels by Optus and Telstra](#)
- 5 Mar [Federal Court Declares Lessor Acted Unconscionably Towards Lessee Market Gardeners](#)
- 3 Mar [Qantas Comments: Business Sunday](#)
- 1 Mar [Small Business in Focus: ACCC Publication](#)

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## What's news

### Trade Practices Act review

On 15 October 2001 the Prime Minister announced that there would be an independent review of the competition provisions of the Trade Practices Act (TPA) and their administration.

The Treasurer announced the terms of reference for the review and the membership of the review committee on 9 May 2002. A copy of the terms of reference can be obtained from the website <http://tpareview.treasury.gov.au> or by phoning the Review Secretariat on (02) 6263 3900 or by fax on (02) 6263 3939.

ACCC Chairman, Professor Allan Fels, commented on the review, saying that 'The ACCC looks forward to working with the Review to enhance the workings of the Trade Practices Act and through it, the Australian economy'.

#### Submissions

To assist its consideration of the competition and authorisation provisions of the TPA, the review committee has invited submissions from interested parties and will consult with key stakeholders.

To assist the committee to meet its reporting date, **submissions are sought by 21 June 2002.**

Submissions can be sent to the following address:

#### email:

[TPAreview@treasury.gov.au](mailto:TPAreview@treasury.gov.au)

#### For printed documents, mail or fax to

The Secretary  
Trade Practices Act Review  
C/- Department of the Treasury  
Langton Crescent  
PARKES ACT 2600

#### Committee Membership

##### Chairman

Sir Daryl Dawson AC KBE CB

##### Members

Ms Jillian Segal

Mr Curt Rendall

The committee will report to the Government by the end of November 2002.

More Information: [MR 114/02 9 May 2002](#)

## In the consumers' interest

### More competition in broadband

A competition notice\* issued to Telstra last September regarding the wholesale price of high speed internet services has been revoked. This follows price reductions of up to 25 per cent and changes to the structure of the wholesale broadband services.

This is good news for consumers. Competitors to Telstra will now have greater incentive to roll out their networks and provide competitive prices for consumers.

\* (The ACCC has the power to issue a competition notice if it has reason to believe that a carrier has engaged in anti-competitive conduct.)

More information: [MR 121/02 16 May 2002](#)

### NAB changes examined

Following a request from the Treasurer, Mr Peter Costello, the ACCC has written to the National Australia Bank querying changes to the National Gold Rewards Program.

The ACCC was concerned that the NAB's change to the redemption rate for Qantas Frequent Flyer points may have misled consumers and misrepresented certain values and characteristics of the rewards scheme. The ACCC has asked NAB a number of questions about the timing and basis of the changes.

NAB has publicly said it will maintain the one for one conversion rate for Qantas Frequent Flyer points earned prior to the July 2002 credit card statement cycle. From July 2002 the conversion rate for new points accrued will be 1.5 National Gold Reward Points to 1 Qantas Frequent Flyer point.

More information: [MR 126/02 21 May 2002](#)

## About the ACCC— e-commerce

The e-commerce section of the ACCC looks at emerging Trade Practices issues in the e-commerce sector. Here are some of the projects the e-commerce section is working on.

### Internet sweepday

In January this year the ACCC coordinated a 'sweep' of the Internet, looking for claims about health products that were likely to mislead consumers. Participants were from 58 agencies in 19 countries.

In Australia, 77 suspicious websites were identified by the ACCC. Of these, eight disappeared within a short time, 12 have provided substantiation for their claims, and 10 have reached 'out-of-court' settlements with the ACCC by removing, altering or qualifying their claims. The others are still under investigation.

### **Domain name registration**

The ACCC is concerned that consumers may have been misled by recent advertising campaigns by sellers of domain name registration and renewal services. An example is the Internet Name Group (ING), who are currently in court with the ACCC over claims made in their marketing.

Consumers should be aware that there are many competing resellers that can register domain names. They should shop around and look for the best service and prices available. Consumers are not obliged to renew their domain with this business. If the solicitation seems misleading, report it to the ACCC on 1300 302 502.

### **Privacy**

The ACCC has noted consumers' concerns about privacy when engaging in e-commerce. This was first raised in the ACCC's E-commerce Conference in November 2001 and has been reinforced in many government and industry reports and papers.

The ACCC has cemented a working relationship with the Office of the Federal Privacy Commissioner through a Memorandum of Understanding. This will allow for referral of matters between the two bodies, and further clarification of the overlap between new privacy legislation and the misleading conduct provisions in the Trade Practices Act.

## **IMSN**

### **The International Marketing Supervision Network**

For some years the ACCC has been aware of the difficulties in gaining redress for consumers, especially when they buy goods and services across international borders. The International Marketing Supervision Network (IMSN) is working towards bringing more joint actions between law enforcement agencies in different countries, and implementing more effective cooperation in providing information to other members.

This year the ACCC is the president of the IMSN, and will be hosting conferences with IMSN members in Australia.

The IMSN has a website where consumers can complain about overseas traders when they cannot obtain refunds, goods do not match the description, or in fact never arrive. Consumers can go to [www.econsumer.gov](http://www.econsumer.gov) to lodge a complaint. IMSN member agencies are assessing these complaints and taking action where appropriate.

## **Recent investigations**

### **Price fixing allegations in court**

Proceedings have begun in court against seven companies and seven individuals alleging petrol price fixing in the Ballarat region. It is alleged that the companies made agreements over the phone to change prices by certain amounts at certain times.

A whistleblower alerted the ACCC of the conduct shortly before Easter 2000. The ACCC is seeking orders, including penalties, costs, injunctions, declarations and the implementation of trade practices compliance programs.

More information: [MR 127/02 23 May 2002](#)

### **Misleading advertising targeted**

#### **Cheap airfares**

Virgin Blue and Qantas have both made court enforceable undertakings to the ACCC that in the future they would advertise all airfares inclusive of taxes, levies and charges.

This change to advertising will avoid confusion as to what the actual cost of an airfare is. The ACCC recognises that a growing number of taxes and levies are included in airline tickets.

ACCC Chairman, Professor Allan Fels said that 'The ACCC is concerned that consumers were responding to the representations of "cheap" headline fares, only to find at the time of booking that the additional taxes, levies and charges added a substantial amount to the total cost of the ticket'.

More information: [MR 117/02 13 May 2002](#)

#### **Collagen ads may be misleading**

The ACCC has instituted proceedings against Collagen Aesthetics Australia Pty Ltd, a company that supplies various collagen and hylaform products. These products are inserted into the skin to reduce wrinkles and/or fill out lips.

It is alleged that Collagen Aesthetics made false and misleading representations in breach of ss. 52, 53(a) and 53(c) about its collagen and hylaform products. The advertisements appeared in several magazines, including *Vogue Australia*, *She* and *Marie Claire*, and contained the following representations:

- because Collagen Aesthetics' products are registered on the Australian Register of Therapeutic Goods, they are safer to use than its competitors' products which are merely listed
- the collagen and hylaform products are safe
- treatment with the collagen products is painless
- the collagen products are natural
- three types of hylaform products are available to be supplied to the public.

The ACCC alleges that these claims are misleading. The ACCC is seeking court orders including declarations, injunctions and costs.

More information: [MR 130/02 27 May 2002](#)

### Job ads alleged to be a misrepresentation

The ACCC instituted proceedings against Channel Ten and Crackerjack Productions in the Federal Court. The ACCC alleges misleading conduct in relation to job advertisements.

Crackerjack Productions placed advertisements in newspapers and with job agencies for a Girl/Boy Friday. The company then filmed applicants' interviews and filmed the two successful applicants. The footage was later used in a television show called Mind Games—a real life adventure.

The ACCC is seeking court orders including declarations that Channel Ten and Crackerjack breached s. 52 and s53B of the Act, injunctions, apologies for the job applicants and costs.

More information: [MR 116/02 13 May 2002](#)

### Abtronic promoters investigated

The ACCC instituted court proceedings against Danoz Direct, the promoters of a health and fitness industry product called Abtronic.

It is alleged that Danoz Direct Pty Ltd and its sole director, Mr Moshe Ozana, engaged in misleading and deceptive conduct while promoting the muscle stimulating machine. The ACCC wants to prevent Danoz from representing that the Abtronic:

- is a brilliant toning and training tool
- can be used to work out and tone different muscle groups
- allows you to just sit and relax and watch your 'abs' tighten, your 'love handles' disappear and your thighs and bottom firm up with no sweating involved
- can flatten your stomach 'once and for all'
- can get you the results of up to 600 sit-ups in just 10 minutes without any effort.

A directions hearing for this matter has been set down for 7 June 2002.

For more information on the US Federal Trade Commission action against the US promoters of Abtronic, see News From Afar on page 4.

More information: [MR 113/02 9 May 2002](#)

### Virgin Mobile in court

The ACCC instituted proceedings against Virgin Mobile Australia Pty Ltd. Virgin Mobile allegedly breached the Trade Practices Act by engaging in misleading and deceptive conduct in nationally advertising several mobile phone packages during the period October 2001 to March 2002.

The advertisements allegedly did not state the full cash price for the packages and also did not inform consumers of the likely termination costs of the contracts.

The ACCC is seeking court orders including declarations, injunctions, corrective advertisements and costs.

More information: [MR 106/02 6 May 2002](#)

### Allans Music

An ACCC investigation has led to the Director of Public Prosecutions instituting prosecution proceedings against the musical instrument retailer Allans Music Group.

The ACCC alleges that Allans advertised musical instruments in a misleading manner in its Christmas 2000 catalogue with 'WAS \$x, NOW \$y' prices, suggesting that a large discount had been made.

Allans Music stopped using this style of advertising when the ACCC brought its concerns to the company's attention. A directions hearing has been listed for 12 June in the Federal Court, Adelaide.

More information: [MR 100/02 2 May 2002](#)

## Competing Fairly Forum

The Competing Fairly Forum was held on 21 May 2002 at venues all across Australia. The theme of the forum was 'Prevention is better than cure'.

Topics covered included compliance programs and industry codes, as well as problem solving methods, such as mediation. The message of the forum was that the Trade Practices Act sets a standard for commercial behaviour, and businesses benefit by adhering to that standard.

A business can have the best intentions, but if staff are not trained properly and they breach the Trade Practices Act, the business may be ultimately responsible.

Consumers should be aware that businesses cannot blame their staff for any representations made. If a representation was made to a consumer, the business may be responsible for that. If you have a problem with a business, you should try to resolve it with the business first, and then attempt other forms of resolution.

Videos of the forum will be available from the ACCC within the next couple of months. The next Competing Fairly Forum will be held in October and will continue on the topic of prevention is better than cure.

More information: [www.forums.accc.gov.au](http://www.forums.accc.gov.au)

## Upcoming events

### Law enforcement conference

A Competition and Consumer Protection Law Enforcement Conference will be held on 4–5 July 2002 at the Regent Hotel in Sydney.

The conference will be an opportunity to hear from those enforcing the law, including a feature presentation by ACCC Chairman, Professor Allan Fels, on how the ACCC prioritises its enforcement work and its litigation trends.

Topics for debate will include changes to the law to achieve more effective enforcement outcomes. ACCC Commissioner Sitesh Bhojani, will discuss a more comprehensive leniency policy for Australian competition law enforcement.

More information: [www.accc.gov.au](http://www.accc.gov.au) or contact Kirstin Stannard on (02) 6243 1170

## News from afar

### UK phone scam

Hundreds of consumers have been victims of a recent telephone scam in the UK. The scam, which was operating out of Canada, called consumers and advised them that they had been entered into the Canadian National Lottery for free. At a later date the consumers were contacted and told that they had won large amounts of money. The scammers then advised the winners that they needed to pay money for taxes on the win.

The scam had previously targeted consumers in the US and Canada. The UK is the latest target. Any country, including Australia, is a possible target for these types of scams. The scams are normally targeted at people who have been caught by similar operations in the past. A list of names of the people previously caught out is commonly known as a 'suckers' list.

If you have been a victim of an overseas-based scam, you can report it to your local fair trading agency. You can also bring it to the attention of international authorities through a website developed by the IMSN, a body of 30 consumer protection agencies across the world (see the e-commerce article for more details). Log onto [www.econsumer.gov.au](http://www.econsumer.gov.au) to report a scam.

### Abdominal toners under fire

The US Federal Trade Commission has this month filed complaints against the marketers of three electronic abdominal exercise belts, alleging that the belts have been misleadingly advertised.

Canadian authorities are also reported to be investigating claims made about the belts (called the AB Energizer, AbTronic and Fast Abs) which include that users will lose weight and achieve 'six-pack' abdominal muscles without exercising.

As part of a cooperative international enforcement effort the ACCC has also instituted court proceedings in relation to one of the belts, the Abtronic.

Advertisements and infomercials for Abtronic aired repeatedly on Australian television claimed the belt would give users flat stomachs and enable them to lose their 'love handles'—all without exercise.

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## May media releases

- 31 May [ACCC Case Against Visy to go to High Court](#)
- 31 May [Shark Challenge 2000 Promoters Settle ACCC Action](#)
- 31 May [ACCC Remains Cautious on Telco Competition: Report](#)
- 31 May [High Court Grants ACCC Leave to Appeal](#)
- 30 May [ACCC Waives 'Ring Fencing' Obligation](#)
- 29 May [ACCC not to Oppose Bayer AG/Aventis Crop Science SA Merger](#)
- 28 May [ACCC Authorises Agvet Chemical Safety Program](#)
- 28 May [ACCC Obtains Federal Court Orders Against Manufacturer of Unsafe Car Ramp](#)
- 27 May [ACCC Institutes Against Collagen Aesthetics Australia Pty Ltd for Alleged Misleading Advertisements](#)
- 24 May [Fire Fighting Enterprises to Provide Compensation for Missed Fire Protection Services](#)
- 23 May [ACCC Not To Oppose Pacific Access Acquisition of Citysearch](#)
- 23 May [ACCC Alleges Petrol Price Fixing in Country Victoria](#)
- 21 May [ACCC to Examine Changes to NAB Rewards Program](#)
- 17 May [ACCC not to Oppose Andersen/Ernst & Young Merger](#)
- 17 May [ACCC Reviews Arrangements Between International Airlines](#)
- 17 May [ACCC's Rural & Regional Program in Western Australia](#)
- 16 May [Professions a High ACCC Priority](#)
- 16 May [Path Cleared For More Broadband Offerings](#)
- 15 May [Prevention Is Better Than Cure: Competing Fairly Forum](#)
- 15 May [Court Penalises Colgate-Palmolive Pty Ltd \\$500,000 for Stopping Discount Advertisements](#)
- 14 May [ACCC Funding: 2002-03 Budget](#)
- 13 May [All Inclusive Price Advertising: Airfares](#)
- 13 May [ACCC Institutes Against Crackerjack Productions Pty Ltd and Network Ten Pty Ltd for Allegedly Misleading Job Seekers](#)
- 10 May [ACCC Welcomes Competition Tribunal's Ruling on the Queensland Gas Pipeline](#)
- 9 May [Trade Practices Act Review 'Major Opportunity': ACCC](#)
- 9 May [ACCC Takes Action Against 'Abtronic' Promoters](#)
- 8 May [ACCC Allows Marketlink Joint Venture](#)
- 8 May [Federal Court Declares Landlord's Conduct Unconscionable, Breached Franchising Code](#)
- 8 May [ACCC Not to Oppose GE Capital/AGC Merger](#)
- 7 May [ACCC Decision Leads to More Efficient Rail Services](#)
- 7 May [ACCC Alleges QANTAS Misused its Market Power in Anti-Competitive Manner](#)
- 6 May [ACCC Takes Action Against Virgin Mobile Australia Pty Ltd for Alleged Misleading Mobile Phone Advertising](#)
- 6 May [Court Gives Reasons For Penalties for Collusion](#)
- 3 May [ACCC Accepts Undertakings From Nufarm and Monsanto](#)
- 3 May [ACCC Institutes Against Kwik Fix Franchisor](#)
- 3 May [ACCC Issues Guidelines for the Negotiation of Discounted Transmission Charges](#)
- 3 May [Federal Court Orders \\$14.5 Million Penalties Against Cartel Participants, and Orders Major Penalties for Managing Directors](#)
- 2 May [ACCC Prosecutes Allans Music for Misleading Prices](#)
- 2 May [ACCC Warns of Mis-Use of 'SPAM'](#)
- 1 May [QANTAS Criticism 'Unfounded': ACCC](#)

## What's news

### ACCC enters oil and petroleum industry company sites

The ACCC entered eight oil and petrol company sites on 23 April, to inspect and copy documents. The ACCC acted after receiving information from a whistleblower that led the ACCC to believe that the companies may have engaged in price fixing conduct which breached the *Trade Practices Act 1974*.

The sites visited included the premises of major oil companies Caltex, Mobil and Shell. More than 90 ACCC officers, including legal staff and IT specialists were involved in the visit. This was the largest operation of this type that the ACCC has undertaken, and the first time the ACCC has undertaken a multi-site exercise.

The ACCC will now analyse the information in the documents copied in the visits. This process will take some time, it is expected that the ACCC will announce the results of the investigation at its conclusion. The ACCC may also look for further information, and possibly conduct a number of interviews, for further fact finding.

More information: [MR 90/02, 24 April 2002](#)

### Consumer groups meet with ACCC

The ACCC Consumer Consultative Committee met again on 16 April to discuss current issues of concern to consumers groups.

The committee first met in November 2000. Representatives from a number of major consumer groups attended (for a detailed list of those groups represented, see the November 2001 edition of *ACCC consumer express*).

Issues discussed at the meeting included:

- telecommunications;
- elements of consumer contracts;
- the issues and problems that surrounded the collapse of Ansett and the current problem with rural services; and
- public liability insurance and its effect on a range of activities, including voluntary work.

The committee is particularly important as it gives the ACCC access to different views on consumer issues.

The next meeting of the committee is scheduled for late July 2002.

Your views as a consumer are important to the ACCC. Is there an article you would like to see in *ACCC consumer express*? If so, please contact the Consumer Express team at [express@acc.gov.au](mailto:express@acc.gov.au)

### Tobacco decision: ACCC investigates

The ACCC will investigate whether British American Tobacco (BAT) and Clayton Utz participated in misleading, deceptive or unconscionable conduct in breach of the Trade Practices Act, following a recent Victorian Supreme Court decision.

Justice Eames concluded that BAT and Claytons engaged in a process of document destruction intending to withhold information relevant to possible litigation; a strategy enabling BAT to destroy documents harmful to its smoking and health litigation defence.

ACCC Chairman, Professor Allan Fels said 'The ACCC is concerned that these matters raise very considerable matters of public interest. Compliance by all businesses including the legal profession with the requirements of the Trade Practices Act is a matter of significant importance'.

Other ACCC regulatory activity focusing on the tobacco industry includes an investigation into complaints that the labelling of tobacco products as 'light' or 'mild' may be misleading.

The ACCC has just submitted a report to the Senate on whether, and to what extent, conduct by tobacco companies may be breaching trade practices law.

More information: [MR 76/02 12 April 2002](#)

### ACCC alleges No-Gap rip-off

The ACCC has instituted proceedings against three specialist obstetricians providing private in-hospital obstetrics services in Rockhampton alleging they agreed to boycott 'No-Gap' billing arrangements offered by a number of private health insurance funds.

The ACCC alleges Drs Mark Leyden, Stephen Robson and Paul Khoo made arrangements in December 2000 and January 2001 that they would not provide private in-hospital obstetrics services to their patients on a 'No-Gap' billing basis.

The ACCC alleges that this amounted to an exclusionary provision (primary boycott) in breach of the Trade Practices Act. Because of this arrangement, the ACCC also alleges that about 200 women in the Rockhampton region incurred out-of-pocket-expenses (gap) for private in-hospital obstetrics services that would otherwise have been covered by their health funds. It is alleged that many rural/regional

patients paid up to about \$700 more than they would have if the agreement had not existed.

The ACCC is seeking court orders including:

- declarations that the obstetricians contravened the Act and the Queensland Competition Code
- reimbursement of the expense incurred by patients in covering the gap
- the publication of information notices in the local media
- injunctions restraining each obstetrician from engaging in such conduct in the future
- findings of fact, and costs.

More information: [MR 78/02 17 April 2002](#)

## In the consumers' interest

### Changes to mobile regulation

The ACCC has announced its decision to include code division multiple access (CDMA) mobile services in the GSM mobile services declaration. Previously, only GSM services were declared as CDMA networks were not in use when the current regulatory regime was introduced.

'The decision brings consistency and greater certainty to the regulation of mobile GSM services', ACCC Chairman, Professor Allan Fels, said.

'The ACCC considers the decision will help to ensure competition continues to increase in the mobile services market.' In reaching its decision, the ACCC considered views expressed by mobile carriers, service providers and other interested parties.

More information: [MR 77/02 12 April 2002](#)

## About the ACCC— Competing Fairly Forum

On Tuesday 21 May 2002 the ACCC, with the support of local convenors and business and consumer organisations, will broadcast its fourth Competing Fairly Forum to over 100 towns across regional, rural and outback Australia.

The forums for 2002 will focus on 'prevention is better than cure' in relation to the Trade Practices Act and broader business activity. Business owners and operators need to know what protection is available through the Act and how to protect themselves and manage conflict. They also need to be aware of their responsibilities to other businesses and consumers.

You are invited to take part in the forum and submit questions to the forum about preventative measures in business practices. For details of dates and locations call the ACCC Infocentre on 1300 302 502 or visit the forum website at <http://www.forums.accc.gov.au>.

## From the Infocentre

### One year of operations!

The ACCC's Infocentre has now been operating for one year. Calls were previously taken by ACCC officers in the regional offices. Receiving all the calls in one location assists the ACCC in identifying emerging issues among consumers and analysing patterns of conduct.

When the Infocentre was formed it had seven full-time staff and five part-time staff. Now the Infocentre has 15 full-time staff.

In the past year the Infocentre has received over 89 000 calls and responded to over 18 000 e-mails.

Some of the calls that staff have taken include:

- complaints about advertising practices;
- complaints about harassment from debt collection agencies;
- warranties and refund issues;
- complaints about pyramid selling schemes and other scams;
- problems with businesses behaving anti-competitively;
- questions and complaints about franchises; and
- questions about ACCC processes such as authorisations and mergers and much more.

ACCC Infocentre staff take complaints, answer questions, and advise consumers on how to assert their rights, particularly how and when they can obtain refunds and what to do when consumers have been misled. Information on these issues and more is available on the ACCC website at <http://www.accc.gov.au>.

For more information on contact details see the ACCC website or call the Infocentre on 1300 302 502.

## Recent investigations

### No shopfront—no excuse for sloppy net traders

NSW-based bicycle importer and Internet retailer, Easybuy.com.au Pty Ltd, which trades as Bikes Direct, has entered into enforceable undertakings with the ACCC to stop misleading consumers and to recall faulty bikes.

After being approached by the ACCC, Bikes Direct acted promptly to rectify misleading statements on its website about consumers' rights and warranties on its products. Bikes Direct will implement a trade practices compliance program for the next three years.

'Because Internet customers cannot personally inspect goods or services, there is a greater obligation on Internet traders to ensure that their website is accurate', ACCC Chairman, Professor Allan Fels, said.

'Importers should also note that they have a high onus to be vigilant in ensuring that goods they import comply with mandatory Australian requirements such as consumer safety

standards. It turned out that in this instance the defects were not life threatening but the importer was not to know that at the time'.

More information: [MR 74/02 11 April 2002](#)

## Internet trader in contempt

The Federal Court has fined Purple Harmony Plates Pty Ltd \$20 000 and imposed \$10 000 fines on the company directors Helen Therese Glover and Neal Arthur Lyster for contempt. The fines are payable within 60 days and they have also been ordered to pay the ACCC's legal costs.

The court imposed the fines because the respondents failed to implement court orders after breaching the Trade Practices Act last year. The breach related to unsubstantiated health and other claims for products promoted on the Internet.

'Enforcement of the law is a high priority as consumers must be fully and truthfully informed', ACCC Chairman, Professor Allan Fels, said. 'This is especially so in respect of matters involving medical and health issues.

'It also sends a clear message to businesses that they cannot hide behind the Internet and use it as an excuse to ignore obligations under the Trade Practices Act. Irrespective of the medium, conduct in trade or commerce in Australia is subject to the Act'.

More information: [MR 75/02 11 April 2002](#)

## Latest developments

### ACCC institutes against ING

The ACCC has instituted Federal Court proceedings against Internet Name Protection Pty Ltd, trading as Internet Name Group (ING), and its director, Mr Mark Spektor.

The ACCC alleges that ING has made false and misleading representations regarding registration and renewal of Internet domain names. The ACCC issued a general warning about Internet domain renewal in January 2001.

The ACCC is seeking orders including declarations ING breached the Trade Practices Act, injunctions restraining ING from engaging in the same conduct in the future, corrective advertising, refunds and costs.

For more information: [MR 81/02 18 April 2002](#) and [MR 15/01 31 January 2002](#)

### Debt collection agency misled consumers

The Federal Court in Adelaide has declared that the debt collection agency, Waterman Collections Pty Ltd, engaged in misleading and deceptive conduct when attempting to recover debts on behalf of the insurance company NRMA (now known as Insurance Australia Group Ltd). The NRMA was not involved in Waterman's conduct.

'This result sends a message to all debt collection agencies that unfair tactics and misleading conduct in the pursuit of their business will not be tolerated either by the court or the ACCC', said ACCC Chairman, Professor Allan Fels.

The ACCC alleged that between February 2000 and June 2001 Waterman sent letters to more than 850 persons who were involved in accidents with NRMA-insured drivers. The letters claimed that \$3171 was 'overdue' and threatened to carry out 'further action without notice' if the amount was not paid within seven days. However, the figure was not the actual liability because at the time Waterman had no information about the cost of repairs.

Further information on debt collection under the Trade Practices Act is contained in the ACCC guidelines, *Debt Collection and the Trade Practices Act*, available on the ACCC website and from all ACCC offices.

For more information: [MR 83/02 19 April 2002](#)

### Storecharter developed for Indigenous communities

*Storecharter* is a voluntary charter developed and published by the ACCC. Stores that have agreed to cooperate with its principles display the *Storecharter* logo.

It is mainly intended for owners/operators of retail stores serving Indigenous communities in rural and remote areas of Australia. This includes stores owned or operated by Indigenous communities, governments or private businesses (whether operated as a separate business or run as part of another business such as a pastoral lease).

The charter's purpose is to:

- help store owners comply with relevant laws
- encourage higher trading standards
- help to further develop understanding and respect between Indigenous people and store owners, operators and staff.

In launching *Storecharter* on 22 April, Professor Allan Fels said that 'Stores signing up to *Storecharter* are giving a visible commitment to meet acceptable standards of customer service' and that 'customers should feel that stores showing the *Storecharter* symbol will respect their rights'.

*Storecharter* is supported by State and Territory Fair Trading agencies, consumer groups, Indigenous agencies and business organisations. For copies of *Storecharter*, go to the ACCC website at [www.accc.gov.au](http://www.accc.gov.au), contact the ACCC Infocentre on 1300 302 502, or e-mail [storecharter@accc.gov.au](mailto:storecharter@accc.gov.au)

More information: [MR 84/02 22 April 2002](#)

## New publications

### Updated 'Little black book of scams' available

A new version of the *Little black book of scams*, published by the Department of Treasury has been released. The publication is a joint work by the state fair trading agencies and national consumer affairs bodies.

The updated version contains more information on the forms scams can take and how to identify them. Some of the scams covered include pyramid schemes, amazing offers, door-to-door scams, investment or financial scams and self-employment scams.

The book tells you what questions to ask when someone is offering what you think might be a scam. It also emphasises the most important trick in avoiding scams—saying **no**.

If you would like a copy of the *Little black book of scams*, contact your local fair trading agency. For more information on scams, see the Scamwatch website at [www.scamwatch.gov.au](http://www.scamwatch.gov.au)

## News from afar

### Canadian consumers benefit from vitamins cartel settlement

Four international drug companies agreed last month to pay CAD\$7.7 million (A\$9.3 million) to settle a class action lawsuit brought by Canadian consumer groups over price fixing of a vitamin food additive.

The settlement is the latest in a series of successful international legal actions brought against pharmaceutical companies for their part in a broader vitamins cartel. Record penalties of more than \$3 billion have already been imposed on participants in the conspiracy, following investigations by enforcement agencies from around the world.

ACCC action against vitamins cartel participants in 2000 resulted in a \$26 million penalty imposed on several companies for their operations in Australia.

## April media releases

- 30 Apr [ACCC and Fiji Commerce Commission: MOU Promotes Cooperation](#)
- 30 Apr [ACCC Obtains Federal Court Orders Against Autobarn for Promotion and Sale of Unsafe Car Ramp](#)
- 30 Apr [ACCC Seeks Comment on Telecommunications Dispute Resolution Processes](#)
- 30 Apr [U.S. Light Cigarette Case Under Close Scrutiny](#)
- 26 Apr [ACCC Points Spotlight on Regional Australia](#)
- 26 Apr [ACCC Puts the Brakes on Misleading Car Ads](#)
- 26 Apr [ACCC to Assess Australia Post's Proposed Price Increases](#)
- 24 Apr [ACCC Welcomes Government Proposals on Telecommunications Competition Reform](#)
- 24 Apr [ACCC Enters Oil Company Sites](#)
- 23 Apr [Issues Paper Reviews Victorian Gas Access Arrangements](#)
- 23 Apr [ACCC's Interim Decision Allows Collective Negotiation of New Contracts for SA Chicken Growers](#)
- 23 Apr [ACCC Builds On New Regional Focus](#)
- 22 Apr [ACCC Calls For Closer Agency Cooperation on Indigenous Consumer Issues](#)
- 22 Apr [Storecharter — A New Approach to Customer Service](#)
- 22 Apr [ACCC Takes Court Action Against Advanced Medical Institute Alleging Misleading Male Impotency Treatment Claims](#)

- 19 Apr [Federal Court Declares Debt Collection Agency Misled Consumers About Debts Owed to Insurance Company](#)
- 19 Apr [ACCC Leans Toward Intervention on Line Sharing, Tells Telstra to Get On With It](#)
- 19 Apr [Federal Court Declares Debt Collection Agency Misled Consumers About Debts Owed to Insurance Company](#)
- 18 Apr [ACCC Alleges Misleading Conduct by Internet Name Group](#)
- 18 Apr [Regulators Push for Greater Consistency](#)
- 17 Apr [ACCC to Oppose API/SIGMA Merger](#)
- 17 Apr [ACCC Alleges Anti-Competitive Boycott Arrangement by Regional Obstetricians to Stop 'No-Gap' Billing](#)
- 12 Apr [Tobacco Decision: ACCC Investigates](#)
- 12 Apr [ACCC Tidies Up Mobile Regulation](#)
- 11 Apr [Federal Court Fines Internet Trader for Contempt](#)
- 11 Apr [No Shopfront - No Excuse for Sloppy Net Traders](#)
- 11 Apr [Victorian Taxi Operators Get Choice on Cameras](#)
- 11 Apr [Advertising Agents Warned of Risks of Breaching Trade Practices Act](#)
- 10 Apr [Company Offers Undertaking for Supplying Non-Compliant Vehicle Jack](#)
- 8 Apr [International Consumer Protection Network Goes After Health Scams to Protect the Health of Global Consumers](#)
- 5 Apr [ACCC Issues Views of Efficient Telecommunications Access Prices](#)
- 4 Apr [ACCC Issues Discussion Paper on Interconnection](#)
- 3 Apr [Better Dispute Resolution for 'E-Consumers' Needed: ACCC](#)

## Need more information? Want to subscribe?

The ACCC's media releases and other useful information can be found on our website at <http://www.accc.gov.au>. Or call the ACCC Infocentre on 1300 302 502. You can receive *ACCC consumer express* for free or contribute an article or your views by sending an email to [express@accc.gov.au](mailto:express@accc.gov.au). Put 'subscribe' in the subject line and we'll do the rest.

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## A newsletter for consumers and the consumer movement

Want to make a complaint? Contact the ACCC Info Centre on **1300 302 502** (for the cost of a local call).  
Want to forward suggestions for future articles? E-mail the Consumer Express team at [express@acc.gov.au](mailto:express@acc.gov.au)

### What's news

#### GST—where to now?

On 1 July 2002 a number of changes will occur in the way the ACCC deals with the New Tax System. First, the ACCC's price monitoring role under s. 75AU expired on 30 June 2002. Second, price exploitation in relation to the New Tax System will not be a specific offence for conduct occurring after 1 July 2002.

The ACCC will still be able to pursue GST-related misrepresentations that occurred during the transition period retrospectively under price exploitation legislation. After 1 July 2002 pricing related misrepresentations fall more generally under the misleading and deceptive (s. 52), and false or misleading representation (s. 53(e)) provisions of the Trade Practices Act.

It is important to remember that consumers should **know** the selling price of a product **before** buying it.

As before 1 July 2002, consumers can still pursue their rights under ss. 52 and 53(e) of the Act in a small claims court. They must first send a letter of demand to the relevant business. If the business does not respond, a claim can then be lodged at the local small claims court.

The ACCC has had particular success enforcing the price exploitation provisions of the Act. Investigations into GST matters aimed to provide restitution for affected parties and to ensure that businesses did not continue to incorrectly display or charge GST. Since the GST was introduced, the ACCC has taken 10 matters to court and has accepted 53 court enforceable undertakings on GST related matters. This has resulted in \$17 million in refunds to consumers.

Most price exploitation matters arose because businesses either experienced technical errors with their GST implementation or misunderstood the effect of the GST on the supplies they made. Most businesses readily admitted their error and agreed to take corrective action.

Consumer and small business complaints to the ACCC now mainly concern confusion arising from price displays that are GST-exclusive and quotes for goods and services.

Problem areas for GST-exclusive pricing have included real estate advertisements and real estate agents' commissions; sales of goods and services over the Internet; menus for cafés, takeaway shops and restaurants; quotations by builders for new homes and renovations; quotations by tradespeople in all consumer areas but notably motor vehicle servicing and repairs.

Even though businesses should display or quote GST-inclusive prices, consumers should, before signing contracts or agreements or before accepting quotes, ensure they are quite clear about the final price.

More information: <http://www.acc.gov.au>

#### Capital Finance to give GST refunds

After an ACCC investigation Capital Finance Australia has agreed to refund 118 consumers more than \$70 000 for incorrectly applied GST on motor vehicle leases.

The ACCC agreed to an informal administrative settlement because Capital Finance cooperated with the investigation.

Capital Finance had sought a ruling on the matter from the Australian Taxation Office. The ruling confirmed that the lease used by Capital Finance did not allow for GST.

Other similar leasing contracts by other finance companies are still under investigation.

More information: [MR 146/02 11 June 2002](#)

#### ACCC protects business from overseas scam

The ACCC has instituted proceedings in the Federal Court against a Swiss-based company, IT&T AG. It had allegedly engaged in misleading and deceptive conduct in relation to an international fax directory operated by the company.

It is alleged that IT&T AG mailed unsolicited documents from Switzerland to Australian business consumers regarding the IT&T International Fax Directory. This directory is published on the Internet and available on CD-ROM from IT&T AG in Switzerland. The documents, which allegedly had the style and appearance of invoices, were typically for 'US\$995.00' and offered a '3% discount if payment made within 14 days'.

It is also alleged that given the general appearance of the documents including design, layout and text, IT&T AG falsely represented: the existence of a former business relationship with the Australian businesses, an existing right to payment, and that a payment to IT&T AG for listing the business in the directory was due and payable.

More information: [MR 148/02 12 June 2002](#)

### Your rights—unsolicited goods and services

Following on from the IT&T AG matter above, it is a good idea to know what your rights are when it comes to unsolicited goods and services. What do you do when you

receive an unsolicited good or service? The law says that you are not obliged to pay for goods or services you have not agreed to acquire. However, there are some things you must do if this happens to you.

If you receive something in the mail, you have two options.

- Notify the company that sent the goods that you did not ask for them or wish to keep them. Advise the company of an address and suitable time where they can come and pick up the goods. If the goods have not been picked up within one month, they are legally yours—but you must notify them first.
- Do nothing. If the seller does not pick up the goods within three months they become your property.

Important: Do not throw the goods out—you are obliged to have them available for collection by the supplier if requested.

If you receive unsolicited services, you need to notify the providing company that you did not agree to these services. If you receive an invoice for the goods or services after they have been sent to you, you can:

- Send a letter back to the company invoicing you and, if appropriate, advise that the services are/were available for collection, and were unsolicited, therefore you are not obliged to pay for them.
- Send the company a letter explaining that you are not liable for the unsolicited services.
- If you threw the goods away on receipt (which is something you should not do), contact the company and advise them of the situation and try to resolve your dispute.

If you have no luck with any of these solutions, call the ACCC on 1300 302 502. The ACCC will advise you on what steps you should take.

## From the Infocentre

### Direct debit—who is in charge?

The ACCC regularly hears from consumers having trouble ending direct debit transactions. Many complaints involve disputed transactions after an agreement has ended, e.g. at the conclusion of a 1-year gym contract. Whatever account the direct debit is linked to, it is your money and your account. Sometimes confusion can arise on who may cancel a direct debit depending on whether the nominated account is an everyday account (including savings or cheque accounts) or a credit card. Often consumers are told that the only party that can cancel a direct debit transaction is the business receiving the money. What is the truth?

**It is your right to stop a direct debit.** The law says that to cancel a direct debit you may notify, in writing, either your bank, or the merchant, or both. Remember: it is important that you read your contract carefully before signing it. Technical difficulties may arise for your bank when cancelling direct debit arrangements on credit cards. If you are planning to halt a direct debit and are encountering some resistance from the business doing the debiting, or from your bank, you need to do the following:

- Write a letter to your bank saying that you no longer wish for the business involved to have access to your nominated account.
- Notify the business in writing that you would like a refund on the unauthorised transactions.
- Send a copy of this letter to the business you are dealing with.
- If the bank refuses to cancel the direct debit, contact the Australian Banking Industry Ombudsman on 1800 337 444, or [www.abio.org.au](http://www.abio.org.au) or contact your local small claims court and lodge a claim for a refund.

The Australian Securities and Investments Commission website contains sample letters of how to cancel direct debits with both your merchant and your bank. For further information, see [www.fido.asic.gov.au](http://www.fido.asic.gov.au)

To avoid problems with direct debit it is a good idea to keep an eye on your bank account statement and make sure that all debits are authorised and are for the correct amount.

## About the ACCC—mergers

The Mergers and Assets Sales Branch of the ACCC is responsible for examining mergers which could substantially lessen competition in a market, as well as applications for authorisation of mergers. It is also responsible for litigating, or accepting appropriate undertakings for mergers that proceed without authorisation and that the ACCC considers to be in breach of s. 50 of the Act.

The ACCC is often perceived as anti-merger, especially by big businesses. The fact is, the ACCC only opposes those mergers that lead to a substantial lessening of competition. Very few mergers actually have this effect. In the financial year 2000–01, the ACCC considered 265 mergers, asset sales or joint ventures. Of these, the ACCC objected to 13. Following several applicants providing undertakings, 10 of these mergers proceeded, and three applications were withdrawn.

When assessing mergers, the ACCC analyses market structures to examine how competitive the markets will be if the proposed mergers proceed. The ACCC must define the market, then examine market factors, such as market concentration, imports, barriers to entry, countervailing power, ability to increase prices or profits, availability of substitutes, dynamic characteristics, vigorous and effective competition and vertical integration. The ACCC accepts submissions from the public and other interested parties when considering mergers.

Currently, the Commonwealth Government is conducting an independent review of the Trade Practices Act; the result may include discussion on the application of s. 50 of the Act.

More information: [http://www.accc.gov.au/merger/fr\\_mergers.html](http://www.accc.gov.au/merger/fr_mergers.html)

## In the consumers' interest

### Basic Bank Account application

On behalf of several Australian banks the Australian Bankers' Association (ABA) has applied for authorisation under the Trade Practices Act to offer a Basic Bank Account. If authorisation is granted member banks will be able to collectively agree on the minimum features of a Basic Bank Account without breaching the price fixing provisions under the Act.

The Basic Bank Account will contain at least the following minimum features: no account keeping fees, no minimum monthly or opening balances, an unlimited number of deposits each month, and up to six non-deposit transactions provided free of charge each month (including up to three over the counter withdrawals).

This account would be available to holders of Commonwealth Government health concession cards, but each bank is otherwise free to determine the eligibility criteria of their individual account.

To grant authorisation, the ACCC must be satisfied that the benefit to the public from the arrangements will be greater than any anti-competitive detriment. The ACCC is seeking submissions on the application for authorisation.

Submissions can be forwarded to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions close on 17 July 2002. For more information on the adjudication process, visit the adjudication page of the ACCC website, at <http://www.accc.gov.au/adjudication/fs-adjudicate.htm>.

## IMSN

### ACCC joins enforcement agencies to target scams

Several consumer protection bodies in Australia have joined forces to warn consumers about scams. Participants include ASIC, ATO and the West Australian Department of Consumer and Employment Protection.

These bodies will be on the lookout for such scams as pyramid selling, illegal investment seminars, dodgy lotteries, get-rich-quick schemes and several work-from-home schemes.

People promoting these schemes are often based overseas or are fly-by-night operators. However, because of the ACCC's involvement with the International Marketing Supervision Network, consumer protection agencies in the relevant country can be notified of the scam.

For more information on scams, call your local fair trading office or the ACCC's Infocentre on 1300 302 502.

More information: [MR147/02 11 June 2002](http://www.accc.gov.au/infocentre/1300302502)

## Recent investigations

### Free2aiR action

The ACCC has instituted proceedings in the Federal Court against Internet TV Australia Pty Ltd trading as Free2aiR and its director, Mr James Young.

Free2aiR allegedly told consumers that their Internet access was free after a one-off payment. There was no mention of ongoing fees and charges payable apart from an excess download charge. The ACCC alleges that this is not true, and that the Free2aiR service had a number of terms and conditions that applied to subscribers including an administration fee. The subject terms and conditions were not brought to the attention of potential customers before customers subscribed to Free2aiR's services.

One of the terms and conditions allegedly allowed Free2aiR to charge customers a quarterly administration fee as well as a set-up fee. It is alleged that some customers received 'quarterly administration' invoices demanding further payment for their Internet services, and threatening to disconnect them if they did not pay.

The ACCC is seeking court orders including:

- declarations that Free2aiR breached the Trade Practices Act
- injunctions, including an injunction restraining Free2aiR from collecting further administration fees
- refunds of quarterly administration fees paid
- a trade practices compliance program
- costs and other orders.

More information: [MR 140/02 5 June 2002](http://www.accc.gov.au/infocentre/1300302502)

### Security company provides refunds

Custom Security Services in Canberra has provided court enforceable undertakings offering refunds and full disclosure to some of its customers after an ACCC investigation.

Numerous complaints were made to the ACCC and the ACT Office of Fair Trading by CSS customers who were charged for security system upgrades undertaken without prior consultation in early 2001. In most cases customers only became aware of the upgrade after receiving an invoice for \$99.

Although CSS subsequently sent letters to its customers explaining the upgrade, the letters failed to disclose the full cost. The modifications to security systems, which started in March 2001, provided an arming and disarming reporting capacity that necessitated daily testing and resulted in significant increases to telephone charges. CSS's attempts to explain the upgrade to its customers also contained representations that were misleading.

As part of the court enforceable undertakings, CSS has agreed to:

- write to customers (whose security system did not previously have facilities for opening and closing reports) affected by the conduct
- offer refunds
- implement a trade practices compliance program.

More information: [MR 153/02 19 June 2002](http://www.accc.gov.au/infocentre/1300302502)

## Airlines all inclusive pricing—update

In the May edition of *Consumer Express* we reported that Qantas and Virgin Blue had agreed to ensure that all advertising for airfares was inclusive of taxes, levies and charges.

These requirements will now apply to the entire travel industry. From 30 June 2002 the ACCC requires that airlines and travel agencies quote all-inclusive prices, with regards to airfares, for the range of their products, including domestic and overseas travel packages.

If you come across a business in the travel industry quoting prices exclusive of taxes and levies, let the ACCC know on 1300 302 502.

More information: [MR 149/02 13 June 2002](#)

## News from afar

### Nigerian scam arrests

South African police have made arrests over an alleged Nigerian scam run by six people. Nigerian scams, which have been around in some form or another since the 1840s, now take the form of emails asking for bank account details to store money. Often the money is claimed to belong to a deceased official and has to be hidden from authorities. These letters and emails are sent to unsuspecting consumers, who quite often find that they lose a lot of money in the process.

People all over the world have fallen prey to these scams. The arrests mark a breakthrough in combating Nigerian scams. The arrests follow other arrests in Toronto last year. Three people were operating a 'boiler room' situation, taking incoming calls and posing as a bank in which the 'hidden funds' were deposited.

If you receive a letter or email that asks you to hide large amounts of money for a large fee, be cautious. Remember if it sounds too good to be true, it most likely is.

## Need more information? Want to subscribe?

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## June media releases

- 28 June 2002 [Compressor Supplier Held Liable for Price Fixing and Collusion](#)
- 28 June 2002 [Federal Court Orders Payment of Compensation to Student Victims of Unconscionable Conduct](#)
- 26 June 2002 [ACCC Protects Consumers' Health Interests](#)
- 25 June 2002 [Regulatory Flexibility Demonstrated in ACCC Draft Greenfields Guideline](#)
- 21 June 2002 [Foxtel/Optus Proposal 'Likely To Breach Trade Practices Act': ACCC](#)
- 20 June 2002 [ACCC Issues Broadband Services Figures](#)
- 20 June 2002 [ACCC Draft Decision Gives Certainty to General Practitioners on Fee Arrangements](#)
- 20 June 2002 [ACCC Issues View on Airservices Australia's Price Rises](#)
- 19 June 2002 [ACCC Accepts Court Enforceable Undertakings From Custom Security Services](#)
- 18 June 2002 [ACCC Enforcement and Leniency Policy to be Discussed](#)
- 13 June 2002 ['No Need' for Apology: ACCC](#)
- 13 June 2002 [ACCC Accepts All-Inclusive Price Advertising Undertakings from QANTAS and Virgin Blue](#)
- 12 June 2002 [ACCC Moves to Protect Australian Businesses from Overseas Publisher](#)
- 11 June 2002 [ACCC Joins Enforcement Agencies to Target Scams](#)
- 11 June 2002 [Capital Finance Refunds Over \\$70,000 After GST Error](#)
- 11 June 2002 [ACCC Ends Investigation of Proposed Retrospective Point Value Changes to the NAB Rewards Program](#)
- 7 June 2002 [ACCC Allows Sydney Councils to Collectively Bargain on Recycling Facilities](#)
- 7 June 2002 [ACCC Asks Whistleblower to Call In](#)
- 7 June 2002 [ACCC Issues Final Decision On Information Requirements Guidelines](#)
- 6 June 2002 [ACCC to Consult Australian Public About Postage Stamp Price Rise](#)
- 5 June 2002 [ACCC Takes Action Against Free2aiR](#)
- 4 June 2002 [ACCC Issues Final Approval for South West Queensland Pipeline](#)

Want to make a complaint? Contact the ACCC Infocentre on **1300 302 502**

Want to forward suggestions for future articles? Email the Consumer express team at [express@acc.gov.au](mailto:express@acc.gov.au)

## What's news

### ACCC draft leniency policy for cartel arrangements

The ACCC released a draft leniency policy on 4 July 2002 to break secret cartel arrangements. The ACCC wants **your comments** on the policy before implementation.

Part IV of the Trade Practices Act prohibits certain types of agreements or understandings between competitors, such as price fixing, bid rigging, output restriction and market sharing. Such secret agreements between large companies are often referred to as 'hard core cartels'.

Cartel arrangements affecting Australian markets almost always operate behind closed doors. Cartels ordinarily involve large corporations who consider it good business to make illicit profits at the expense of the public. Cartel arrangements are designed to artificially raise prices and restrict output thereby causing substantial damage to other businesses, consumers and the economy.

The leniency policy aims to destabilise cartel arrangements. It provides strong incentives for corporations and the executives involved to come forward with evidence that may enable the ACCC to take enforcement action. The ACCC sees it as a high priority to protect consumers and the economy by detecting, stopping and deterring domestic and international cartels.

This new draft policy sets out the ACCC's conditions for lenient treatment for the first company or individual to come forward with evidence of a cartel operating in Australia.

The draft policy and other relevant information is available from the ACCC website at <http://www.accc.gov.au>.

All interested parties are encouraged to provide comment on the draft leniency policy by no later than **30 August 2002**. Submissions should be addressed to:

Australian Competition and Consumer Commission  
Enforcement Co-ordination Branch  
PO Box 1199  
DICKSON ACT 2602

### New Consumer Commissioner— Jennifer McNeill

Jennifer McNeill began her term as Commissioner on 22 July 2002.

Before joining the Commission, she was a partner in a major national law firm, practising predominantly in litigation and dispute management. While with that firm she gained broad experience in contentious matters covering areas of the law, such as Parts V and VA of the Trade Practices Act, insurance, professional negligence and contractual disputes. She was also the firm's pro-bono scheme partner in Canberra.

Ms McNeill will be playing a particularly active role in the Commission's enforcement and consumer protection activities.

### ACCC chips away at region coding

PlayStation owners had a significant win after the Federal Court established the rights of owners to have their game consoles modified with a special 'chip' to play imported and copied games.

Chips allow consumers to play backup copies of PlayStation games they have bought, and to play imported games from other regions by circumventing region coding measures in the consoles and games. Sony produces and distributes games globally according to three mutually exclusive regions.

The ACCC intervened in the Federal Court proceedings after Sony Computer Entertainment Australia took action against an individual involved in 'chipping' consoles and selling copied games. The ACCC was granted leave to be heard in the proceedings as a 'friend of the court'.

The ACCC argued that region coding does not exist to prevent copyright infringement. The court held that the effect of region coding is to restrict the playback of certain games, not to prevent copies from being made. The court noted that the Copyright Act does not make it illegal for consumers to play certain games (such as parallel imports and legitimate backup copies of games), but rather prohibits the illegal copying and distribution of games.

The court agreed with the ACCC's interpretation of s. 116A of the Copyright Act, which makes it illegal to make or supply a device or measure that is designed to overcome copyright protection measures, providing that these measures have no commercially significant purpose other than to protect copyright.

The court noted that region coding does not prevent or inhibit the copying of games and is therefore not worthy of protection under Australian Copyright Law. This decision may set a precedent if the courts consider the issue of region coding measures present in other forms of digital media, such as DVD's. At present, there is no evidence to suggest that DVD player modification chips enable the illegal copying of DVD's.

Sony was successful in establishing that the individual had sold unauthorised copies of PlayStation games. The Copyright Act continues to protect the rights of manufacturers and owners of intellectual property from unauthorised copying.

Consumers should note that this judgment does not confer the right to produce and distribute illegal or pirated copies of games.

More Information: MR 181/02 29 July 2002  
[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=758](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=758)

## Your rights—pyramid scams

Consumers often ask the ACCC about the difference between a pyramid selling scheme and a multi-level marketing scheme. Sometimes the differences might not be obvious to the average consumer.

Pyramid selling schemes rarely involve the legitimate and regular retailing of products. Instead, they provide rewards for introducing new participants. Saturation point is very quickly reached and later recruits have little chance of recovering their money.

Legitimate marketing schemes only provide rewards based on genuine product sales.

Pyramid sales promoters may attempt to disguise their schemes by selling goods and services that are overpriced, of poor quality, difficult to sell or of little value.

Participants who induce others to join pyramid schemes, as well as the initial promoters, are in breach of s 61 of the Act.

There are two questions that may help consumers identify legitimate multi-level marketing schemes:

- Are the rewards for participants in the scheme purely based on product sales (by either themselves or others they introduce to the scheme)?
- Are the products genuine products, of real value, of a type that normally will be used and purchased time and time again by a consumer, and not at a grossly inflated price?

If you answer yes to both questions, it is likely that the scheme is a legitimate multi-level marketing scheme.

If you have doubts about a particular marketing scheme, the ACCC or your state or territory fair trading agency may be able to assist. You should seek legal advice before entering into any business arrangements.

## From the Infocentre

### Harassment and coercion (s. 60) —it's not all debt collection

Complaints to the ACCC of harassment or coercion of consumers have more than doubled in the past year, largely because of increased debt collection activity. However, a growing number of these complaints concern selling tactics.

Section 60 of the Act prohibits the use of physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer, as well as in connection with payment.

Justice French of the Federal Court noted that the word 'harassment' as used in s. 60 also 'describes a range of conduct, in connection with the supply of goods or services which involve...applying repeated pressure to a consumer who is under no pre-existing obligation to acquire'.

If a salesman keeps ringing a consumer to sell them a product or service despite requests to desist, such conduct may breach section 60. Undue coercion may also breach this section.

More Information: Guideline to section 60: *Debt collection and the Trade Practices Act*:  
[http://www.accc.gov.au/pubs/Publications/Business\\_general/Debt\\_collection/DEBTCOLLECT.pdf](http://www.accc.gov.au/pubs/Publications/Business_general/Debt_collection/DEBTCOLLECT.pdf)

## In the consumers' interest

### SOCAP Conference 16–18 October

The Society of Consumer Affairs Professionals in Business Australia Inc. will host its 12<sup>th</sup> Annual Conference at the Sofitel Hotel, 25 Collins Street, Melbourne. The theme for the conference this year will be 'Unlocking consumer thinking: what's driving consumer behaviour today?'

The conference will focus on consumer behaviour. What are consumers saying? What are the implications for business and other organisations? What about the future?

More information: <http://www.socap.org.au/>

### Western Australia: free investor forums in August

ASIC and the Institute of Chartered Accountants will host a series of investor forums in four venues in Western Australia during August. Learn how to protect yourself against scams, swindlers and their sickening consequences. Admission is free.

More information:  
<http://fido.asic.gov.au/fido/fido.nsf/byheadline/ASIC+Investor+Forums?openDocument>

## Straight talking—ACCC launches a training tool for business

The ACCC has issued a new tool to help business, big and small, and their employees comply with the consumer protection provisions of the Trade Practices Act.

*Straight talking—advertising, selling and the Trade Practices Act* is a new 37-minute video covering issues such as fine print advertising, refunds and warranties, and misleading pricing.

The video contains extracts from the ACCC's Competing Fairly Forum on advertising and selling, chaired by George Negus. A panel of experts outlines some problem areas and the basics of truthful advertising. The video also provides some entertaining examples of shonky selling practices.

While the video is designed as a training tool for business employees, it can also be used for community workers or business studies students.

*Straight talking—advertising, selling and the Trade Practices Act* costs \$10 and is available from the ACCC's Publishing Unit. It complements the more extensive *Advertising and Selling*, a publication that looks at the consumer protection rules in a bit more detail.

More information: *Advertising and Selling* (Nov. 2001) [http://www.accc.gov.au/pubs/Publications/Business\\_general/Advertising/AdvertisingSelling\\_Nov2001.pdf](http://www.accc.gov.au/pubs/Publications/Business_general/Advertising/AdvertisingSelling_Nov2001.pdf)

## Update from the June edition

### Basic Bank Account application

The Australian Bankers Association (ABA) applied to the ACCC on behalf of several Australian banks for authorisation under the Trade Practices Act to offer a Basic Bank Account. If authorisation is granted, member banks will be able to collectively agree on the minimum features of a Basic Bank Account without breaching the price fixing provisions of the Act.

To grant authorisation, the ACCC must be satisfied that the benefit to the public from the arrangements will be greater than any anti-competitive detriment. The ACCC sought submissions from interested parties on the application for authorisation. The closing date for submissions was 17 July 2002. The ACCC has received 24 submissions relating to the application for authorisation lodged by the ABA. Staff from the ACCC are currently meeting with a number of community and consumer organisations to discuss the Basic Bank Account initiative proposed by the ABA. The ACCC intends to prepare a draft determination once the consultation process with interested parties has been finalised.

For more information on the adjudication process, visit the adjudication page of the ACCC website, at <http://www.accc.gov.au/adjudication/fs-adjudicate.htm>.

## Product safety alert

### Unsafe fire extinguisher

Consumers who have bought portable fire extinguishers in the last few years are being asked to check that it is not the 'FIRE CAP Fire and Smoke Suppressant' brand, which is potentially dangerous.

The product may have been sold door-to-door in Northern Queensland as part of a safety package.

The 300mm high aerosol cans are red, orange, yellow, black and white with a red plastic cap and red aerosol button. Wording on the can reads in part 'FIRE CAP ... FIRE and SMOKE SUPPRESSANT' ... 'FOR USE ON SMALL SPOT FIRES'.

Tests have shown that this particular extinguisher could intensify some types of fires, particularly oil fires. Consumers are advised to safely discharge and dispose of the extinguisher.

More Information: MR167/02 4 July 2002  
[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=742](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=742)

## Recent investigations

### Alleged misleading conduct about tours to Aboriginal land

The ACCC recently instituted proceedings against Voyages Hotels and Resorts Pty Ltd (Voyages) alleging misrepresentations about tours to Yulara Pulka Aboriginal Homelands near Uluru. Representations included: that Voyages had exclusive rights to offer these tours, that Aboriginal owners would meet with tour groups and that Aboriginal owners would receive a significant amount of the tour price from Voyages.

More information: MR 169/02 9 July 2002  
[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=753](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=753)

### Home loan program a pyramid selling scheme

In June 2002 Guardian Finance and Insurance Consultants Pty Ltd and Mr Peter Martin James (Guardian) consented to Federal Court orders that its Guardian Reducible Home Loan Introducers program and Rate Reward program (the programs) breached s. 57 (Referral Selling) and s. 61 (Pyramid Selling) of the TPA. This scheme involved a particularly large financial transaction—possibly the largest financial decision for consumers—the purchase of a home.

Remedies by consent order included injunctions restraining Guardian from engaging in future contraventions, the implementation of a compliance program and refunds of application fees paid by participants.

More information: MR 169/02 9 July 2002  
[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=746](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=746)

## From other regulators

### The Telecommunications Industry Ombudsman

The Telecommunications Industry Ombudsman (TIO) is warning consumers to steer clear of Internet service providers (ISPs) with contract clauses that discourage customers from taking complaints to the TIO.

The Ombudsman has been made aware that a number of ISPs are using an anti-TIO clause that claims that the ISP can suspend a customer's Internet service if they make a complaint to the TIO.

Legislation is currently being introduced to prevent companies from passing on TIO fees to their customers after it was discovered that an ISP was charging a customer for the TIO's investigation of his complaint.

The Ombudsman said that access to the TIO scheme was one of few consumer safeguards in the largely unregulated Internet industry and called on ISPs to stop using the clause. 'Any ISP using this clause should seriously consider the damage they are doing to the confidence of their customers and to the credibility of the industry.'

For the full story see TIO Media Release of 26 June: [http://www.tio.com.au/media\\_statements/RELEASES/2002/release\\_04.htm](http://www.tio.com.au/media_statements/RELEASES/2002/release_04.htm)

The TIO is an independent non-government scheme with a dispute resolution focus. It is not a consumer advocate, but rather a service to help consumers and telecommunications companies resolve disputes.

If you experience difficulties with your ISP or other Telecommunications provider, you can contact the TIO (freecall) on **1800 062 058** or on-line at <http://www.tio.com.au>.

## Recent developments

### Domain names registration

The ACCC has had concerns for some time about consumers being misled about domain name registration and renewal services:

- in January 2001 the ACCC issued a 'Consumer Alert' in the form of a media release on the issue
- in February 2001 the ACCC produced a publication titled *Fair.com* to inform Internet service providers of their responsibilities under the Trade Practices Act
- on 8 March 2002 the Federal Court declared that Stephen Henry Wayt of *COM.AU REGISTER* had engaged in misleading and deceptive conduct in promotion of domain name registration services, as a result of ACCC action
- in April 2002 the ACCC instituted proceedings against the Internet Name Group (ING), alleging misleading claims made in their marketing

- in July 2002 the ACCC provided assistance through referring complainants to the au Domain Administration (auDA), who took legal action against Internet Registry for misleading statements in the course of solicitations for domain name renewals.

Consumers should be aware that there are many competing resellers that can register a domain name, and shop around like they do for any other product, seeking the best service and price. Domain name registrations are renewed every two years.

If you have not had previous dealings with this business, you are not obliged to renew your domain with them. If the solicitation seems misleading, report it to the ACCC on **1300 302 502**.

### 'Free' or 'unlimited' Internet access

In recent years the ACCC has pursued several cases of misleading conduct in the provision of Internet access. Particularly when businesses claim to offer 'free' or 'unlimited' access to the Internet. The ACCC also worked with the Telecommunications Industry Ombudsman in 1997 to investigate advertising claims and issued an information sheet to ISPs.

The ACCC recently instituted court proceedings against Internet TV Australia, or 'Free2Air' on 5 June 2002. Previous actions started with the court's decision on the use of the word 'free' in the Nationwide News Ltd case in 1996, and continued with enforceable undertakings from Microsoft and Prentice Hall in 1996. The Wavequest case followed in 1998, the GoConnect case in May 2000, and the Optus@home decision in November 2000.

It is clear that businesses cannot advertise 'free' or 'unlimited' Internet access, and then attempt to impose charges or limits through fine print, disclaimers, terms and conditions, or user policies.

### Exercise products in 'infomercials'

The ACCC is currently in court with Danoz Direct Pty Ltd and Mr Moshe Ozana about their promotion of the 'Abtronic', represented as a muscle stimulation device.

The ACCC has asked the court for injunctions to stop the promoters from claiming that the Abtronic gives the results of up to 600 sit-ups in just 10 minutes without any effort, can flatten your stomach once and for all and other similar claims. The ACCC is alleging misleading conduct.

The Federal Trade Commission in the USA has also taken action against promoters of Abtronic, applying for injunctions to stop claims that the device will lead to loss of fat and inches, and is superior to other abdominal exercises.

More information: MR 113/02 9 May 2002  
[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=686](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=686)

## News from afar

### Company touting unproven cancer treatment agrees to settle FTC charges

The Federal Trade Commission (FTC) warns of over 280 websites making questionable health claims.

A Southern California-based company that touted safe and effective 'alternative' treatments for cancer has agreed to settle FTC charges. BioPulse International, Inc., BioPulse, Inc. and their principals advertised in print and on the Internet that their therapies—'insulin-induced hypoglycemic sleep therapy' (IHT) and 'Acoustic Lightwave Therapy' (ALW) could effectively treat a wide variety of cancers and other serious diseases.

The U.S.-based company offered its purported treatments in a clinic in Tijuana, Mexico. The FTC alleges that the defendants did not have adequate substantiation for the safety and efficacy claims made for these treatments. As part of the settlement with the FTC, the defendants are permanently barred from misrepresenting the safety of IHT or any similar treatment and from making any unsubstantiated safety or efficacy claims for IHT, ALW, or any dietary supplement, food, drug, device, or any health-related service.

<http://www.ftc.gov/opa/2002/07/biopulse2.htm>

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## July media releases

- 30 July 2002** [ACCC Institutes Against Synergy](#)
- 29 July 2002** [Game Over for Sony Playstation](#)
- 26 July 2002** [ACCC Receives API/Sigma Merger Authorisation Application: Seeks Submissions](#)
- 25 July 2002** [ACCC Does Not Object to Temporary Price Increase for Airservices Australia](#)
- 24 July 2002** [International Expert on Electricity Markets Opens ACCC Conference](#)
- 22 July 2002** [ACCC Deregulates Local Call Services in Major Capital Cities](#)
- 19 July 2002** [ACCC Alleges Misleading Conduct About Tours to Aboriginal Land Near Uluru](#)
- 18 July 2002** [ACCC and Rural Press](#)
- 12 July 2002** [ACCC Institutes Against Wesfil Australia Pty Ltd Alleging Country of Origin Deception](#)
- 11 July 2002** [ACCC to Oppose Joint Venture Between Farm Pride Foods and Pace Farms](#)
- 10 July 2002** [ACCC Action Stops Pyramid Scheme in Home Loan Industry](#)
- 10 July 2002** [Federal Court Orders N.R.M.A. Health Insurance Ads Misleading](#)
- 10 July 2002** [Telstra Complies with Government Conditions to Increase Line Rental Charges](#)
- 10 July 2002** [Tasmanian Launch of ACCC Rural and Regional Program](#)
- 4 July 2002** [Draft Leniency Policy to Break Hard Core Cartels Issued](#)
- 4 July 2002** [National Electricity Market - Rebidding Code Changes: Draft Determination](#)
- 4 July 2002** [Court Orders Dell to Publish Corrective Advertisements](#)
- 4 July 2002** [Warning: Unsafe Fire Extinguisher](#)
- 2 July 2002** [ACCC Submission to the Review of the Trade Practices Act 1974](#)
- 1 July 2002** [Significant Cut in Telstra's Charges for Transferring Business Numbers After ACCC Inquiry](#)
- 1 July 2002** [ACCC to Recommend Consistent Pricing Principles for Mobile Services](#)

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## What's news

### Review of negligence proposals wind back consumer protections

After the ministerial meeting on public liability insurance on 30 May 2002, the Commonwealth in consultation with the states and territories agreed to jointly appoint an expert panel to examine the law of negligence, including its interactions with the *Trade Practices Act 1974* (the Act).

The Review Panel of the Principles Based Review of Negligence (the panel) released its first report on issues relating to professional negligence, the reform of the Act, limitation periods and reforms to assist not-for-profit organisations on 2 September 2002.

The panel's second report will develop options for limiting liability and quantum of awards for damages as well as evaluating proposals to allow self-assumption of risk to override the common law.

In its first and second submissions to the review, the ACCC noted that the proposals to either amend the Act by the Recreational Services Bill, or to limit other consumer protection provisions of the Act, will mean that consumers will inappropriately bear the risks of recreational and other activities.

The ACCC believes that reform of the law should be driven by policy that focuses on reducing the number of accidents and the costs of the resulting injuries.

The ACCC is concerned that there is a lack of hard evidence to suggest that personal injury awards made under the Act have contributed to or caused the current insurance problems.

The first report by the panel recommended that new legislation should be enacted to apply to any claim for personal injury or death resulting from negligence, regardless of whether the claim is brought in tort, contract, equity or under statute (such as the Trade Practices Act) or other course of action.

The ACCC believes that the proposed legislation will unacceptably reduce the legal protection available to consumers. This proposal will:

- limit the ability of individuals to bring actions (or the ACCC to bring representative actions) for damages for personal injury or death under Part V, Division 1 (the misleading and deceptive, or false and misleading prohibitions)
- means that a person cannot be held liable for failing to warn of 'obvious' risks

- limit recovery under the unconscionable conduct and product safety provisions of the Act.

Recommendations envisage limiting quantum of damages (caps) and other restrictions.

The ACCC believes that the panel's rationale for the removal of such important consumer protection measures appear to be based on a fear of what may happen in the future rather than any existing problems with the way the protection operates.

More information:

<http://revofneg.treasury.gov.au/content/home.asp>

### RBA credit card reforms

Over a three-year period the Reserve Bank of Australia (RBA) has been reviewing credit card schemes in Australia. On 27 August the final reforms were announced by the Payments System Board of the RBA.

In October 2000 a joint study published by the ACCC and the RBA found that issuing credit cards to consumers and providing merchants with the capacity to accept credit card payments generates revenues that are well above the average cost to the banks of providing the services. The joint study also found that interchange fees should be well below current levels.

Interchange fees are recovered from the merchant's bank by a card holders bank. These fees apply when a customer pays for products using a credit card issued by one institution when the merchant uses another institution to process its card payments.

The reform measures provide for new entrants to issue credit cards or provide merchant services, establish a cost-based benchmark for determining interchange fees, and end the restrictions imposed by the schemes that prevent merchants from recovering from card holders the costs of accepting transactions paid with credit cards.

Businesses previously had no choice but to recover the cost of credit card payments by charging all consumers higher prices. In effect consumers who do not use credit cards are subsidising those who do.

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=782](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=782)

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## Unclaimed money

Many consumers receive notices from entities claiming to have located amounts of unclaimed money. The notices offer to forward the unclaimed funds after the consumers has forwarded personal identification, and authorised the deduction of an often considerable fee.

Consumers can quickly conduct free searches for unclaimed funds administered by the Australian Securities and Investments Commission (ASIC). These funds are collected from banks, credit unions, building societies, companies (shares), life insurance companies, friendly societies, for companies that have been deregistered, or for unclaimed shares and acquisitions under the Corporation Law. Contact ASIC on **1300 301 198** or at

<http://www.fido.asic.gov.au/fido/fido.nsf>

Consumers can check if they have unclaimed superannuation money through the Lost Members Register administered by the Australian Taxation Office on **131 020** or at

<http://www.ato.gov.au/content.asp?doc=/content/Professionals/super/16442.htm>

Each state or territory maintains its own Registrar of Unclaimed Moneys, which is administered by the State Department of Treasury and Finance or equivalent. Businesses are required to advertise all amounts over \$100 in a gazette administered by the department. Businesses are allowed to deduct gazette related advertising expenses from the remitted moneys. Consumers and business may access the Register of Unclaimed Moneys or more detailed advice by contacting their State Department of Treasury and Finance.

Considering the availability of this information, it may be prudent to conduct your own inquiries and claim the money yourself. Providing your ID to a third party may enable them to claim money on your behalf, or use your ID in a manner you have not authorised.

## In the consumers' interest

### Insurance customer initiative

The ACCC was pleased to note the release of AAMI's Compulsory Third Party Claimant Charter. It sets out a policy for dealing with claims by consumers who are involved in an accident with an AAMI policy holder.

The ACCC encourages businesses to set out their customer aims, benchmarks and strategies in a plain and visible way to ensure compliance.

The ACCC looks forward to other insurance companies developing similar programs.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=763](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=763)

## Product safety alert

### Konjac jelly cups banned

The Parliamentary Secretary to the Treasurer, Senator Ian Campbell, announced an eighteen-month temporary ban on mini-cup jelly confectionary containing konjac after a substantial number of deaths and near deaths in Australia and overseas.

The mouth-sized mini-cup jellies can pose a serious choking hazard, particularly to young children and the elderly.

Konjac, also known as glucomannan, konjonac, konnyaku, yam flour and taro powder, is used to bind the product. Unlike gelatine-based jellies, konjac-based jellies do not readily dissolve. If these jellies lodge in the throat they are not easily dislodged, even by the Heimlich manoeuvre.

Introducing a national ban under the Act ensures that all states and territories are covered. Penalties under the Act apply to suppliers, importers and retailers of the products. Penalties imposed by the court may be up to \$1.1 million for corporations and \$220 000 for individuals.

The ban will be enforced nationally by the ACCC.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=780](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=780)

## Recent investigations

### Reality TV show exploits job seekers

The Federal Court in Sydney found that a television production company, Crackerjack Productions Pty Ltd (Crackerjack) have misled job seekers about the availability of work offered by it while making a reality television program for Network Ten.

Crackerjack had advertised casual jobs in the NSW regional city of Dubbo and in Melbourne for five days' work. In the consent orders, the court found that Crackerjack's purpose in advertising and offering the work was to obtain candid film footage of job seekers. The court also found that Network Ten, by commissioning the production of the program by Crackerjack, was knowingly concerned in Crackerjack's breaches of the Act.

The advertisements and vacancies lodged with job agencies were placed to lure job seekers to an interview. Two job seekers were then offered the advertised work. The work was not genuine and the tasks they performed were part of an elaborate hoax.

Producers of reality TV shows must be careful not to engage in misleading conduct that breaches the Act. People looking for work are generally in a vulnerable position and businesses must not unfairly take advantage of this.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=785](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=785)

### Ministerial Council on Consumer Affairs

The Ministerial Council on Consumer Affairs (MCCA) held its 11<sup>th</sup> annual meeting in Adelaide on 2 August. MCCA comprises Commonwealth, state and territory and New Zealand ministers responsible for fair trading, consumer protection, trade measurement and credit laws.

At the meeting, the ministers determined that the new mandatory requirements for comparison rates relating to fixed term credit will begin nationally on 1 July 2003. This resolution, which amends the Uniform Consumer Credit Code, will enable consumers to access a schedule of comparison rates from loan providers to help them shop around for the best deal when considering a loan.

The ministers also agreed to bring forward a new standard for babywalkers including requirements for stability, a mechanism to prevent babies falling down steps or stairs and safe use warning labels. The ministers agreed that the new babywalker regulation would commence on 1 November this year.

It was also agreed to include Indigenous consumer issues in remote and rural Australia in the MCCA strategic agenda.

More Information: <http://www.consumer.gov.au>

## Recent developments

### Internet auctions

#### Risk of fraud

The ACCC has acknowledged for some years that online auctions carry a degree of fraud risk. In its August 2000 publication *Internet auctions: what you should know before you bid or sell*, the ACCC quoted figures from the National Consumer League in the USA, revealing that 87 per cent of Internet fraud reported by consumers in 1999 came from online auctions. The average annual loss per consumer when reporting fraudulent behaviour on Internet auction sales was A\$489.

Online auction facilities also acknowledge the risk of fraud despite their complex monitoring and detection efforts. They provide information about the risks, and advice about ways to reduce the risk on their sites and in terms and conditions of contracts entered into by bidders and sellers when they register to use the service.

There remains a high demand for these services.

#### What will happen to your complaint?

Taking payment without intending to supply is prohibited under s. 58 of the Act. The conduct could be addressed by the ACCC, by your local Office of Fair Trading or you have the right to private action. It also amounts to fraud and if so, may be addressed by police.

When deciding what action is appropriate, the ACCC focuses its resources on matters of national significance, involving international or multi-state conduct, with a high level of detriment to consumers. The ACCC is not likely to

pursue an online auction fraud on behalf of an individual consumer.

It is more likely that your complaint will contribute to a database of similar complaints, so that regulators can look for patterns that might reveal repeat offenders, and sufficient evidence to pursue them. When the offender is overseas, there are cooperative arrangements in place between regulators in 30 countries to facilitate assistance in investigation and prosecution where possible.

#### Your best defences

Protect yourself by being informed of the risks, and reduce them by:

- paying cash on delivery
- using an escrow service
- using insurance offered by the auction facility (or other provider)
- paying by credit card where possible (so that chargeback can be used)
- asking for and confirming the seller's street address (not PO Box)
- keeping records of all bids, item description, emails to and from the seller, and transaction records/receipts.

#### Liability

The liability of the auction house can be limited by the terms of the contract formed with bidders and sellers. Careful scrutiny of these terms may clarify that the consumer does not wish to register to bid at all. The online auction facility is not covered by different laws to a 'regular' offline auction. However, the locality of the trader may be difficult to determine, and jurisdictional issues may hamper legal action. Generally the facility must disclose the terms to both bidder and seller in advance of the auction, and is covered by the competition and consumer protection provisions in the relevant jurisdiction.

#### Other issues

Auction sites have arrangements in place to assist law enforcement agencies on request. They have feedback mechanisms to discredit and remove fraudulent sellers, and tracking and cross-recognition procedures to prevent fraudulent sellers from re-registering with falsified details.

The ACCC is educating Internet users about the risks of fraud when buying goods over the Internet, especially through online auctions. Many people continue to bid, even after they are aware of the risks, and this is entirely their choice.

The ACCC has also taken action against various online auction sellers. In some cases, this has led to settlement of the ACCC's concerns. In others, the ACCC has traced the seller to a country where no cooperation agreements exist, or there is no consumer protection authority, and the investigation has halted. In all matters the ACCC must continue to use its resources efficiently to produce the best outcomes for Australian consumers.

## US—misleading statements about electronic pest control devices

Lentek International, a company that manufactures and sells pest control devices, has been accused by the FTC of false advertising after Lentek claimed that its electronic mosquito repellent device protected against the West Nile Virus.

The complaint also includes allegations of misrepresentations about various pest control devices and air cleaning products.

Lentek's advertising for MosquitoContro claimed that the product emitted sounds similar to those of male mosquitos and dragonflies, thereby repelling the female biting mosquito. Citing advice from the Center for Disease Control, the FTC alleges that these ultrasonic products are not effective in repelling mosquitos.

PestContro, the other major product included in the FTC complaint, is marketed as a product which emits ultrasound waves that drive pests from the home.

The FTC alleges that Lentek's claims that the PestContro's ultrasonic waves repel pests have no reasonable basis, and that claims that the PestContro altered the electromagnetic field in a home's wiring are without basis.

The FTC recommends that consumers should not abandon tried and tested preventative measures against infection such as immunisation, chemical repellants, choice of clothing, mosquito netting and avoidance measures such as staying indoors at dawn and dusk.

More information:

<http://www.ftc.gov/opa/2002/08/lentek.htm>

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- 30 August 2002** [ACCC Declares Line Sharing](#)
- 30 August 2002** [Court Finds TV Production Company Misled Job Seekers, Aided by TV Network](#)
- 29 August 2002** [ACCC Issues Draft Report on Disclosure of Telecommunications Information](#)
- 28 August 2002** [Federal Court Confirms ACCC Decision to Allow Victorian Chicken Meat Growers Collective Negotiation](#)
- 27 August 2002** [ACCC Welcomes Reserve Bank Credit Card Reforms](#)
- 27 August 2002** [ACCC not to Oppose Merger Between Consolidated Meat Group and Teys Bros](#)
- 23 August 2002** [Dangerous Confectionery Banned](#)
- 22 August 2002** [Negligence Review Risks Creating Significant 'Losers': ACCC](#)
- 22 August 2002** [Ausbulk National Grower Register Immunity to Stand](#)
- 21 August 2002** [Federal Court Declares Woolworths Beef Advertisements False and Misleading](#)
- 20 August 2002** [ACCC Welcomes Tribunal's Decision to Allow Dairy Farmers to Collectively Negotiate](#)
- 20 August 2002** [ACCC Proposing to Approve Revenue Increase for Gasnet](#)
- 20 August 2002** [Court Finds Westfil Misled about Filters' Country of Origin](#)
- 20 August 2002** [ACCC Proposes to Accept Key Access Revisions by Vencorp](#)
- 16 August 2002** [ACCC to Oppose Proposed Acquisition to Protect Competition in Flour Milling](#)
- 16 August 2002** [ACCC not to Oppose Graincorp/Cargill's Proposed Acquisition of Milling Australia](#)
- 16 August 2002** [Real Estate Agent Refunds GST on Commission](#)
- 16 August 2002** [ACCC and Rural Press](#)
- 15 August 2002** [ACCC Issues Final Decision on Transmission Ring Fencing Guidelines](#)
- 13 August 2002** [ACCC Monitoring Initiative for Telstra's Wholesale Customers](#)
- 12 August 2002** [Woolworths Beef Advertising Misleading](#)
- 8 August 2002** [Ford Credit to Provide Over \\$430,000 in GST Refunds on Car Leases](#)
- 6 August 2002** [Compulsory Third Party Claimant Charter Launched](#)
- 5 August 2002** [ACCC Seeks to Intervene in South Sydney Case in High Court](#)
- 1 August 2002** [Info4PC.com Pty Ltd and James Rae in Contempt](#)
- 1 August 2002** [ACCC Issues Final Approval on Moomba to Adelaide Pipeline Access Arrangement](#)

## A newsletter for consumers and the consumer movement

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### What's news

#### IMSN—international consumer agencies combating cross-border fraud

The International Marketing Supervision Network (IMSN) met in Sydney from 23–25 September.

The IMSN is a network of law enforcement agencies from 30 countries whose aim is to take action against traders regardless of where they are located. This is achieved through information-sharing and investigative assistance, to prevent and redress cross-border deception and fraudulent marketing practices.

This is the first conference during the ACCC's presidency of the IMSN.

Issues discussed at the Sydney conference included investigations and cases resulting from the 2002 international Internet Sweep (which focused on misleading and deceptive claims about health products) and the planning of future activities.

Internationally, eighteen companies are still facing legal action and 209 investigations are running in the participating member countries of the IMSN after the last Sweep. A large number of traders have settled out of court, have pulled the offending products and claims from distribution or from advertising, or have had their websites shut down entirely. This number is likely to increase as current investigations progress.

Actions to date in Australia: out-of-court settlements have been reached with businesses promoting:

- pheromone products claimed to increase sex appeal
- magnetic fields and colloidal silver (silver suspended in water) claimed to cure AIDS and boost the immune system
- magnetic devices claimed to be effective in treating headaches, back injuries and a range of other ailments
- treatments that could 'diagnose and treat ageing' thereby 'reversing the ageing process'
- a multi-coloured shirt claimed to make the wearer more intelligent and perceptive and boost the immune system.

Matters not arising during the Sweep, but concerning similar health-related claims include the ACCC's current proceedings against Danoz Direct. The ACCC has alleged

that advertising claims made about the Abtronic muscle stimulation device are false and misleading. Danoz Direct is contesting the allegations. The ACCC has also filed against Transformation2012.com.au regarding website claims that their products could treat or assist in curing cancer, AIDS, diabetes, herpes, hepatitis, MS, chronic fatigue and a range of other ailments.

Cross-border actions taken by the ACCC have included the successful prosecution of Skybiz.Com Inc, an American-based company, for illegal pyramid selling and various associated misrepresentations affecting consumers in Australia. The ACCC was greatly assisted in this action by its international counterparts, in particular the FTC.

Consumers wishing to report cross-border and on-line fraudulent behaviour may wish to contact the <http://www.econsumer.gov> website in addition to contacting the ACCC on **1300 302 502** and their local Office of Fair Trading.

#### Morgan poll finds most Australians support jail terms for anti-competitive collusion

An independent poll conducted by the Roy Morgan Research Centre, released on 19 September 2002, found that eighty seven per cent of respondents to the poll agree that changes to the *Trade Practices Act 1974* (the Act) should be made to allow jail sentences to be imposed on individuals convicted of hard-core collusive conduct.

Only 6 per cent of Australians polled did not agree with the changes as they were articulated in the poll.

When asked why respondents thought that penalties including jail sentences for hard-core collusive conduct should be contemplated, the main reasons and sentiments 'centred around their [respondents] belief that executives should be responsible and accountable for their actions, just as other members of the community are ... and that white collar crime should be treated the same as any other ... such crime goes relatively unpunished'.

The ACCC suggests (in its submission to the Dawson review of the Act) that only large companies which satisfied two of the following three criteria should be liable for criminal penalties: gross revenue in excess of \$100 million, gross asset value in excess of \$30 million, or more than 100 employees.

If enacted, criminal provisions would operate concurrently with the existing civil provisions for anti-competitive conduct. The Director of Public Prosecutions would prosecute the matters. Cases would be tried before a judge

and jury, would require a unanimous verdict, and proof beyond reasonable doubt.

More information:

<http://www.roymorgan.com.au/polls/2002/3555>

## Insurance industry market pricing report

Late in March 2002, the Senator the Hon. Ian Campbell, Parliamentary Secretary to the Treasurer, asked the ACCC to update its March 2002 *Insurance industry market pricing review*. The ACCC updated this first report with the release of its September 2002 *Insurance industry market pricing review*. The second report concludes that the overall industry performance outlook for the 2002–03 financial year is positive.

The report indicates that factors other than ‘rising personal injury awards’ are contributing to the current insurance problems that have been highlighted in the review of the law of negligence.

It concludes that successive years of considerable premium increases will significantly improve the profitability of the professional indemnity and public liability classes for the 2002–03 financial year.

The review finds that compulsory third party (CTP), commercial motor, domestic motor, marine and aviation, mortgage, consumer credit, and other accident classes of general insurance are considered to be producing ‘high’ or ‘very high’ returns for the industry.

The second insurance review analyses in detail the factors affecting the performance of the public liability and professional indemnity sectors. It updates the data on overall market performance and premium increases.

The Commission’s analysis of the general insurance market is primarily based on statistics published by APRA, premium and claims data and commentary provided by sixteen general insurance companies.

More information:

[http://www.accc.gov.au/pubs/publications/industry/Insurance%20report\\_Sept2002.pdf](http://www.accc.gov.au/pubs/publications/industry/Insurance%20report_Sept2002.pdf)

## In the consumers’ interest

### Statutory warranties—what are your rights?

Consumers often ring state or territory fair trading offices or the ACCC with a general warranty issue to request that these offices take action on their behalf.

It is worth noting that the ACCC and fair trading offices are unable to take action on behalf of consumers for breaches of statutory warranties or conditions. Why is this?

The Trade Practices Act is a national statute and the provisions in Part V of the Act imply certain non-excludable rights, conditions and warranties into all consumer transactions. These statutory rights are implied into the contract between you and the vendor of the goods or services, regardless of whether or not there is a written contract in place.

This means that a breach of these warranties and conditions is a breach of the contract. Consumers must take their own action for a breach of contract. The law does not provide for agencies to intervene and enforce these conditions.

Statutory conditions are the essential terms of a contract. If these are breached, consumers can cancel the contract and obtain a refund. Many complaints to the ACCC are in fact disputes encountered by consumers when they try to enforce statutory warranties. Statutory warranties entitle consumers to practical remedies - such as replacement or repair of the goods or services.

If a dispute is heard by a court, it can order compensation for any additional losses that occurred as a result of deficiencies in the product.

### What do I do if I have a problem claiming a warranty or obtaining a refund?

The first step may often be the most effective—putting your complaint in writing directly to the trader. When writing to the trader, you should include as a minimum: the date of purchase, an outline of the problem, your request for a remedy, a date that you expect to hear from them, supporting documentation and your contact details.

Supporting documentation such as receipts or packaging should be retained, and a copy of any documentation provided to the retailer kept for your records.

### Where do I get help?

State or territory fair trading agencies may informally mediate disputes between consumers and traders, or investigate breaches of the law if you are unable to resolve the dispute with the trader.

The ACCC publication [Warranties & Refunds](#) provides more detailed information about all these issues for both consumers and traders. It provides examples of what consumers can do in most situations, as well as a letter template to help consumers claim for warranties or refunds.

The trade or industry association of the trader, your local consumer affairs or fair trading agency, consumer claims tribunals, or small claims courts may also be able to help or enforce a warranty on your behalf.

Consumers should remember that their first step is to inform the trader that they have a problem with goods or services.

### Action the ACCC can take

The use of signs such as ‘no refunds’ or statements by sales staff which deny or imply that no right of refund exist are unlawful and ineffective, and may render traders liable for breaches of the misleading and deceptive conduct provisions of the Act.

The ACCC (and fair trading agencies) monitor trends and complaints and take very seriously any such attempts by businesses to mislead consumers regarding their rights in relation to these implied warranties and conditions.

Additional express warranties may be provided by businesses. These warranties are in addition to the implied warranties. Seller risk breaching the Act if they misrepresent the benefits of these express warranties.

## Recent decisions

### Authorisation for Pharmaceuticals merger declined by the ACCC

The ACCC declined authorisation for the proposed merger between API and Sigma because the likely public benefits flowing from the merger would not outweigh the harm to competition. The merger would create a company with 60 per cent of the wholesale pharmaceuticals market in NSW, VIC and Queensland, and more than 50 per cent in other states.

API and Sigma are full-line wholesalers of pharmaceutical products. As the name implies, they provide the complete range of products required by retail pharmacies—including PBS products, non-PBS products and pharmacy-only products—typically over 15 000 product lines.

The companies claimed that efficiency gains worth \$20 million a year would flow from the merger, on a combined revenue base of \$3,500 million. The companies also claimed that several other benefits would flow from the merger. The Commission accepted that some public benefit would result from the merger.

However, the ACCC considered that these benefits would not outweigh the significant public detriments that were likely to result from the merger. The Commission was particularly concerned that price rises and/or declines in service levels would be likely if the merger proceeded.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=798](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=798)

## Recent investigations and actions

### Vodafone 'pre-paid' pays consumers back

Some Vodafone FastFone customers will be refunded the number of call credits that were lost in certain circumstances after Vodafone acted to address concerns raised by the ACCC.

Customers of certain pre-paid mobile telephone services complained to the ACCC that they were misled about a cut in the expiry period for their call credits. Vodafone acknowledged that it did not inform all its customers of this change, and has provided a range of remedies for affected consumers in court enforceable undertakings.

Companies must fully disclose terms and conditions and inform their customers of any material changes about their service supply, or risk being in breach of the misleading conduct sections of the Act.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=810](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=810)

### Domain name reseller in court

The ACCC has instituted Federal Court proceedings against a domain name reseller, Internet Registrations

Australia (IRA), for allegedly misleading and deceptive conduct, and false or misleading representations.

The ACCC alleged that since January 2001 IRA falsely represented that they had pre-existing relationships with businesses, had the authority to register or renew a consumers domain name and could provide these services, and that they could register '.com.au' domain names on the internet for periods of four, six, eight or ten years.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=802](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=802)

### Internet access – consumer rights are not excludable

The ACCC has instituted proceedings against Dodo Internet Pty Ltd (Dodo) alleging misleading and deceptive conduct and false and misleading representations regarding representations made by Dodo about the cost and nature of its Internet access services.

The ACCC has alleged that Dodo made representations to the effect that its customers have no rights or remedies against Dodo about the provision of its services.

The ACCC alleged that Dodo's terms and conditions contain clauses that claim to exclude consumers' rights and remedies under statute and the common law. The ACCC alleged that Dodo engaged in unconscionable conduct in its dealings with consumers who received large STD telephone bills because they relied on Dodo's misrepresentations.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=803](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=803)

### 'Investment' was a gambling scam

The Federal Court has made orders by consent that a Gold Coast businessman, Robert James Price, had misled consumers, and in one instance, acted unconscionably in connection with the marketing and sale of horse race betting software in Australia and New Zealand.

The court found that the software was a gambling program, not an 'investment program', did not have a strike rate of success of between 70 and 95 per cent and that the number of people who purchased the program would in fact render the program less effective. The court also found that the program was not affiliated with the TAB and that there were no reasonable grounds for representing that purchasers could expect to earn income or profit using the program.

In late 2001 the ACCC obtained interlocutory orders to stop the offending claims pending final orders from the court. The companies involved included Solutions Software International Pty Ltd, and companies formerly known as Acepark Pty Ltd and Offtrack Investments Pty Ltd.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=793](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=793)

## Publications

### Food labelling

When are goods 'Made in Australia' and when are they a 'Product of Australia'? Consumers have the right to be confident that claims made on food and beverage labels are accurate. These claims are the subject of a recently released [Country of Origin Guide for the Food and Beverage Industry](#).

Goods that are 'Made in Australia' must have been substantially transformed; and 50 per cent or more of the cost of production must be performed in the country claimed to be the origin.

'Product of Australia' claims have a more stringent test. Each significant component of the goods must have originated from, and all or virtually all processes involved in the production or manufacture of the goods must have occurred in the country claimed to be the origin.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=794](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=794)

### Free Internet-based trade practices training program

The ACCC has recently launched *Best & Fairest*, a free Internet-based training package to assist businesses understand their trade practices rights and responsibilities.

*Best & Fairest* is comprised of several discrete training modules that can be tailored to suit the individual needs of an organisation. There are examples for staff to work through, with questions and answers at the end of each module. It also includes guides for specific industries to help them identify their trade practices risks.

*Best & Fairest* is also available on hardcopy (\$100) and on CD-ROM (\$20).

More information:

[http://www.accc.gov.au/smallbus/best\\_fairst/default.htm](http://www.accc.gov.au/smallbus/best_fairst/default.htm)

## Updates to matters reported in previous editions

### Sony appeals PlayStation region coding decision

In the July 2002 edition of *ACCC consumer express*, the ACCC reported that the Federal Court agreed with the ACCC's interpretation of s. 116A of the Copyright Act on the circumvention of region coding measures by the use of 'mod-chips'.

Sony has filed a notice of appeal with the Federal Court. The ACCC will update readers with the outcome of this appeal after the Federal Court has considered the matters and handed down a judgment.

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The ACCC's media releases and other useful information can be found on our website at <http://www.accc.gov.au>. Or call the ACCC Infocentre on **1300 302 502**. You can receive *ACCC consumer express* for free or contribute an article or your views by sending an email (preferably including contact details) to [express@accc.gov.au](mailto:express@accc.gov.au). Put 'subscribe' in the subject line, and we'll do the rest.

## September media releases

- 30 September 2002 'Milestone' for Merger Review, International Competition Advocacy at Inaugural International Competition Network (ICN) Meeting
- 30 September 2002 A.C.C.C. Report to the Senate on Wholesale Grocery Prices
- 27 September 2002 Vodafone Refunds Customers Misled by Fastfone Changes
- 27 September 2002 U.S. Web-Based Pyramid Selling Scheme Banned
- 25 September 2002 ACCC Institutes Against Commonwealth Bank Over 'Cricket' Home Loan Advertising
- 23 September 2002 ACCC Alleges Misleading Internet Marketing of Health Products
- 23 September 2002 Global Enforcement Action Brings 'Sweep'ing Change
- 18 September 2002 ACCC to Keep Telco Industry Informed on Access Prices
- 17 September 2002 ACCC Alleges Predatory Pricing in Barge Matter
- 17 September 2002 ACCC Institutes Against Dodo Internet Pty Ltd
- 17 September 2002 ACCC Alleges Misleading Conduct by Internet Registrations Australia
- 17 September 2002 ACCC Launches Free Internet-Based Training Program
- 16 September 2002 ACCC Approves Access Arrangement for Wallumbilla to Brisbane Pipeline
- 16 September 2002 ACCC Approves Access Arrangement for Ballera to Mt Isa Pipeline
- 12 September 2002 ACCC Denies Authorisation for API - Sigma Merger
- 11 September 2002 Utility Regulators' Forum Reports on Network Access Regulation
- 11 September 2002 Naptha Investigation Closed
- 10 September 2002 Broadband Take-Up Continues Solid Growth
- 10 September 2002 Country of Origin Guide for the Food and Beverage Industry
- 9 September 2002 ACCC Trifecta Against Gold Coast Punting Software Promoters
- 6 September 2002 ACCC Decision on Postal Prices
- 6 September 2002 ACCC Updates Advice for Rural Industry
- 5 September 2002 ACCC Institutes Legal Action Against FILA for AFL Licensed Apparel Policy
- 5 September 2002 ACCC Seeks Comment on Section 87B Undertakings for Foxtel/Optus Proposal
- 2 September 2002 Consumers To Lose From Negligence Review Proposals: ACCC

## A newsletter for consumers and the consumer movement

Want to make a complaint? Contact the ACCC Infocentre on **1300 302 502** Want to forward suggestions for future articles?

Email the *ACCC consumer express* team at [express@accg.gov.au](mailto:express@accg.gov.au)

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### What's news

#### Negligence review recommendations threaten consumer interests

The panel undertaking the principles based review of the law of negligence issued its second report on 2 October 2002. The recommendations made in the report would, if adopted, seriously compromise consumer rights under the *Trade Practices Act 1974*. The Act contains several provisions that protect consumer rights, and provide avenues of redress where businesses do not fulfil their obligations to consumers. These are:

- Prohibitions on misleading and deceptive conduct and unconscionable conduct.
- The warranties and refunds provisions, which imply certain conditions into all consumer contracts. For example, services must be carried out with due care and skill.
- The product safety and product information provisions that require manufacturers, importers, wholesalers and retailers to ensure that certain goods meet particular standards, and that dangerous goods are not sold or can quickly be withdrawn from sale.
- In the case of defective goods, manufacturers and importers may also be liable when their goods cause personal injury or property damage to a person. Goods are defective if their safety is not what consumers are reasonably entitled to expect.

The objective of the Act is to enhance the welfare of Australians by promoting competition and fair trading and providing consumer protection. The proposed changes would undermine this objective, and the ACCC opposes any watering down of consumer rights.

One panel recommendation is to prevent individuals and the ACCC from bringing actions for damages for personal injury and death arising from a contravention of the misleading and deceptive conduct provisions of the Act. Misleading or deceptive conduct can include a failure to disclose an important fact. A market can only function effectively if consumers have confidence in claims made by suppliers. Requiring businesses not to engage in misleading or deceptive conduct is not an onerous burden, and delivers high benefits. The ACCC can conceive of no circumstance where it would be acceptable for a supplier to mislead or deceive a consumer.

The panel also recommends that businesses should not be liable for a failure to warn of an obvious risk. Obvious risks are risks that would have been obvious to a reasonable person in the circumstances, and may include matters of common knowledge, of low probability or risk that could be avoided or removed by the exercise of reasonable care.

The panel recommends that a provider of recreational services should not be liable for personal injury or death suffered by a voluntary participant in a recreational activity arising as a result of the materialisation of an obvious risk. It also recommends that providers of recreational services be able to contract out of liability for personal injury or death sustained during a recreational activity; that is, to allow consumers to assume risks themselves. In so doing, participants in recreational activities may be asked to waive their statutory rights. Other changes would limit the time to initiate an action and the amount recoverable.

The current regime of strict liability for suppliers of goods and services allocates responsibility for risk prevention to the party best placed to gauge the costs and benefits. It recognises the limited ability of consumers to properly assess risks associated with goods and services.

Consumers have the right to expect that the services they buy will be provided with care and skill. The ACCC considers business suppliers to be better placed than consumers to assess the risks and to guard against its consequences. Allowing consumers to assume such risks is likely to result in a dangerously low level of care from suppliers, and high costs of risk avoidance being borne by consumers.

The above examples are only some of the changes proposed; other reforms would also significantly compromise the welfare of Australian consumers. Details of the full report, and the ACCC's two submissions, are below.

It is also important to note the wider economic harm that, in the ACCC's view, is likely to result from such reforms. By lowering the basic standard that consumers are reasonably entitled to expect, and reducing the protection under the Act, individuals may be prevented from being compensated for harm improperly caused to them. Such an outcome would erode consumer confidence in the goods and services offered to them, and ultimately reduce the efficiency of Australia's economy.

[Review of the Law of Negligence—second report](#)

[Second ACCC submission to the principles based review of the law of negligence \(PDF\)](#)

[First ACCC Submission to the Principles Based Review of the Law of Negligence \(PDF\)](#)

### Your new motor vehicle—what are your rights?

An increasing number of new car buyers contact the ACCC about their new car warranty. Specifically, consumers want to know whether their warranty is still valid if they choose to get their vehicle serviced by someone other than an authorised agent of the business that sold the car.

The Trade Practices Act contains a number of provisions relevant to this situation:

- Exclusive dealing generally involves a business attaching conditions to the sale of goods that restrict the buyer's freedom to choose with whom, or in what, they deal. Exclusive dealing, such as full-line forcing (where the consumer is required to purchase two or more items from the same trader) or 'bundling' (where two or more items are sold together as a package), is illegal where it has the purpose or effect of substantially lessening competition.

One particular kind of exclusive dealing is 'third line forcing', which involves the supply of goods or services on the condition that the buyer acquires goods from a particular third party. Third line forcing is illegal regardless of its effect on competition.

- The warranty and refund provisions imply certain minimum standards into all consumer transactions. The goods must be of merchantable quality, be fit for their purpose, and match any description or sample.
- Businesses are not allowed to make any misrepresentations to consumers about their right to a refund, or limiting their liability in any way.

#### Expressed and statutory warranties

Expressed warranties are usually specified under the agreement with the dealer; it might state a specific time period, maximum liability and limitations. Expressed warranties operate in addition to statutory warranties, and cannot restrict the provisions of the statutory warranty.

For example, the dealer may provide a warranty for one year or 20 000 kilometres, which includes free scheduled servicing and parts. However, this would not in any way affect the statutory warranty that would apply long after the expiration of the one-year voluntary warranty.

Generally dealers will be able to place certain conditions on the expressed warranty given to buyers. A consumer **may** void their expressed warranty if, for example, the car is fitted with non-genuine parts. If this is the case, it is sometimes best to check with the manufacturer before purchase. However, the statutory warranties will continue to apply unless the service of the independent mechanic or the fitting of the non-authorised part caused the fault.

#### New vehicle warranty

Motor vehicle dealers are entitled to insist that any servicing performed on cars they sell is carried out by qualified staff, according to the manufacturer's specifications, and using genuine or appropriate quality parts where required.

Where a problem arises with the vehicle (i.e. other than servicing requirements) that is covered under the warranty, the vehicle should be taken to the dealer for repair.

#### Qualified staff

Qualified staff is a party or parties, other than an 'authorised dealer', who is capable of performing car servicing.

#### Manufacturer's specifications

If an independent agent implies that it can perform general car servicing to manufacturers' specifications and does not perform that function satisfactorily, then the consumer has rights and remedies against the agent regardless of whether the agent has factory qualifications or not.

#### Genuine or appropriate quality parts

The issue here is not who manufactured the part/s, it is whether the part/s are fit or appropriate for the purpose intended. If a part is non-genuine, but is interchangeable with the genuine part, it could be seen as being fit or appropriate for the purpose and would therefore not void the manufacturer's warranty. However, it must also be noted that should the part/s installed fail or not perform satisfactorily, the consumer then has rights against the fitter and/or manufacturer of those replacement parts. If the non-genuine part fails, and causes some other damage to the vehicle, the dealer will not be liable for damage caused by the failure of that part.

Provided these conditions are met, the new car warranty should remain intact. Dealers are not, however, entitled to impose conditions beyond this in an effort to restrict trade, or unreasonably require the purchaser to buy services from an agent of their choice.

Dealers are not permitted to limit their obligations under the warranty and refund provisions, or make any representations to this effect, eg. that the warranty is void if the vehicle is not serviced by the dealer or its agent.

Provided consumers do research and ensure that wherever they take a vehicle for servicing, the staff are qualified and all other provisions above are met, the warranty will be safely intact for the warranty period. For further information, see [Warranties and refunds](#).

## Recent outcomes

### Company offers undertaking for supplying unsafe children's cot

An importer of children's cots which did not comply with mandatory product safety labelling and design standards has provided court enforceable undertakings to the ACCC. Lane Wrigley Pty Ltd has undertaken to implement a trade practices compliance program to reduce the possibility of similar breaches. Lane Wrigley Pty Ltd had supplied the cots, known as the 8036 Baby Bed, to discount variety stores throughout Australia. The cot was designed and marketed as one that could also be converted into a bed. The cot was of an insufficient depth to minimise the risk of child climbing or falling out of the cot and contained protrusions and hazardous openings.

After the ACCC raised its concerns with the company, it stopped further supply and recalled those it had supplied. The ACCC notes Lane Wrigley Pty Ltd's prompt action and cooperation in resolving this matter. More information: [http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=823](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=823)

## ACCC stops false professional credentials claims

The ACCC took legal action against Rod Turner Consulting Pty Limited and Mr Rod Turner, its sole director, in July 2000. The firm, representing itself as chartered accountants, wrote a letter signed by Mr Turner to a tenant making false statements about the effect of the then New Tax System. The letter claimed that from 1 July 2000 (because of the NTS) an extra 10 per cent would be payable on residential rent charged by a landlord and that from 20 June 2000 the landlord was including a GST component in the increased rent. The letter also claimed that water rates for the rented premises would carry a GST cost to the landlord.

The court found that Rod Turner Consulting Pty Limited had breached s. 52(1) of the Trade Practices Act because of its chartered accountants' misrepresentation. The court also found the firm to be in breach of s. 52(1) for the misrepresentations it had made about the effect of the GST on residential rents and water rates. The court found that Mr Turner had been knowingly concerned in these breaches. The court restrained Rod Turner Consulting Pty Limited from representing that it was a firm of chartered accountants and also Mr Turner from representing that he was a chartered accountant. The court also ordered Mr Turner to attend a trade practices seminar at his own expense, and for the firm and Mr Turner to pay a contribution towards the ACCC's costs in this matter. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=814](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=814)

## Recent investigations and actions

### Viva Olive oils

The ACCC has instituted proceedings in the Federal Court, Adelaide against The South Australian Olive Corporation and Inglewood Olive Processors Limited, the producers and marketers of Viva brand olive oils for country of origin on product labels, in television and magazine advertising, and on the website at <http://www.barkworth.com.au>.

The ACCC alleges The South Australian Olive Corporation and Inglewood Olive Processors Limited have engaged in misleading and deceptive conduct by making various representations about Viva olive oils being Australian when, in fact, each bottle of Viva brand olive oil contains approximately 20 per cent imported olive oil.

The ACCC is also taking action against Mr Mark Troy, a director of The South Australian Olive Corporation and Mr James Smyth, the General Manager of The South Australian Olive Corporation, for allegedly aiding or abetting or being knowingly concerned in the breaches.

The ACCC seeks declarations, injunctions, corrective advertising, a trade practices compliance program and costs. A directions hearing is listed in the Federal Court, Adelaide on 4 November 2002. More information: [http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=826](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=826)

See also the recently released *Country of origin guide for the food and beverage industry*.

## Publications

### Competition and consumer issues in indigenous communities

The ACCC has issued a research report *Competition and consumer issues for Indigenous Australians*.

The report by the Centre for Aboriginal Economic Policy at the Australian National University provides better awareness of relevant Indigenous cultural issues and market practices which affect Indigenous communities.

While the views expressed in the report are not necessarily of the ACCC, the report will be valuable in developing future Indigenous strategies. The research has already assisted in developing *Storecharter—a service charter serving remote and Indigenous communities*, and other education materials. The establishment of the ACCC's Rural Network, comprised of more than 450 regional supporters, and ACCC staff visits, are key methods of providing better access to this information.

Copies of the report are available from the ACCC for \$25 or may be downloaded free from the website. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=832](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=832)

### ACCC/REIA launches guide for the real estate industry

The ACCC, in cooperation with the Real Estate Institute of Australia, recently launched *Fair and square*, an industry guide to the Trade Practices Act. Written for owners, managers and advisers to the real estate industry, *Fair and square* sets out what practices are acceptable when marketing property.

*Fair and square* (\$10) is available from the ACCC Publishing Unit on (02) 6243 1143, or free from the [ACCC website](#). It will soon be available from the [REIA website](#). More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=830](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=830)

## Health insurance updates

### Medibank Private

The ACCC is seeking special leave to appeal to the High Court the decision of the Full Federal Court in September to uphold an application by Medibank Private to strike out aspects of the ACCC's claims for remedial orders.

The ACCC, under a delegation from the Australian Securities and Investment Commission (ASIC), instituted proceedings against Medibank Private alleging false, misleading and deceptive advertising of its health insurance products. The advertising related to rate increases, waiting periods and other conditions.

The decision, handed down in the Federal Court, Melbourne, stated that the court was persuaded by Medibank Private's arguments that certain parts of the ACCC's claims should be struck out. The decision raises

important questions about the extent of powers given to the court under s. 80 of the Trade Practices Act.

The Full Federal Court overturned the decision of Ryan J who had decided on 21 March 2002, that the ACCC's claims should be allowed to proceed to trial in their entirety. More information:  
[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=824](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=824)

## MBF

In February 2001 the ACCC instituted proceedings against Medical Benefits Fund of Australia Limited in the Federal Court, alleging false, misleading and deceptive advertising of its health insurance products. The alleged conduct includes the use of pregnancy related images to advertise insurance, when in fact a 12 month waiting period applied to claims for obstetric related services. The ACCC alleged the disclosure of applicable waiting period in 'fine print' was insufficient to detract from the overall impression that the advertisements were misleading and deceptive. The ACCC sought orders including the publication and broadcast of corrective advertisements

The Federal Court found that the television and billboard advertising was misleading and made orders for corrective advertisements to appear on television and in newspapers, but stayed the orders pending the outcome of an appeal lodged by MBF. Advertising agency for MBF, John Bevins Pty Ltd, was found to be knowingly concerned in the conduct and has similarly lodged an appeal against the decision. More information:  
[http://203.6.251.7/accc.internet/media/search/view\\_media.cfm?RecordID=251](http://203.6.251.7/accc.internet/media/search/view_media.cfm?RecordID=251)

## NRMA/Saatchi and Saatchi (ad agency)

In July this year the Federal Court in Sydney made orders by consent against NRMA Health Pty Ltd (also trading as SGIC Health and SGIO Health) and NRMA Insurance Ltd concerning advertisements which appeared in various newspapers in September 2001 and on its web site.

The print advertisements depicted a woman nursing a new born baby and stated: 'free delivery...no matter how advanced your pregnancy is', and contained fine print disclaimers that full coverage for obstetric services was subject to any excess or co-payment and service of a 12 month waiting period with NRMA or another health fund.

The orders included declarations that the advertising was misleading, a requirement that NRMA inform consumers of the misleading conduct, waiver of waiting periods for those who were misled and the availability of refunds for excesses and co-payments.

The ACCC also alleged that Saatchi & Saatchi, NRMA's advertising agency, was involved in the contraventions. On 3 October 2002 Jacobsen J dismissed the ACCC's application as it related to the involvement of Saatchi and Saatchi. An appeal to the Full Federal Court was filed on 24 October 2002. More information:  
[http://203.6.251.7/accc.internet/media/search/view\\_media.cfm?RecordID=815](http://203.6.251.7/accc.internet/media/search/view_media.cfm?RecordID=815)

## October media releases

- [31 October 2002 Federal Court Finds Rockhampton Obstetricians' Boycott of 'No-Gap' Billing Breached Competition Laws](#)
- [29 October 2002 ACCC Action Against BMW \(AUSTRALIA\) Limited Over Jacks](#)
- [29 October 2002 Wizard Found to Have Misled or Deceived Home Loan Consumers](#)
- [25 October 2002 False Labelling and Misleading Information: Federal Court Fines Tamar Knitting Mills](#)
- [25 October 2002 Federal Court Decision – Re: Michael Kotowicz - Shark Challenge 2000 Competition](#)
- [25 October 2002 ACCC Announces Final Decision on Postal Prices](#)
- [24 October 2002 ACCC Authorises Scheme to Increase the Number of Skilled Bricklayers in NSW](#)
- [24 October 2002 ACCC Institutes Against Telstra 'Say G'Day' Calling Card Product](#)
- [24 October 2002 ACCC Receives Public Liability Pooling Proposal for Not-for-Profit Organisations](#)
- [22 October 2002 Federal Court Declares Westfund Health Insurance Fund Misled Consumers](#)
- [21 October 2002 ACCC Opposes Part of James Cook University's Enrolment Policy](#)
- [18 October 2002 Fair and Square: Real Estate Industry Guide from the ACCC and the R.E.I.A.](#)
- [18 October 2002 ACCC Issues Research Report into Competition and Consumer Issues in Indigenous Communities](#)
- [18 October 2002 ACCC Draft Determination on Market and System Operations Rules to Promote Certainty in the Victorian Gas Industry](#)
- [17 October 2002 ACCC Institutes Against the Producers of Viva Olive Oils](#)
- [17 October 2002 ACCC not to Oppose Acquisition of Budget by Avis Parent Company](#)
- [17 October 2002 Internet Domain Name Resellers Warned Against Misleading, Deceptive Conduct](#)
- [16 October 2002 ACCC Not to Oppose Incitec/Pivot Merger](#)
- [15 October 2002 ACCC to Seek Leave to Appeal to High Court from Full Federal Court's Decision to Strike Out Part of ACCC Case Against Medibank Private](#)
- [14 October 2002 Company Offers Undertaking for Supplying Unsafe Children's Cot](#)
- [14 October 2002 Golden Casket to Reform Procedure for Assessing Gaming Applications](#)
- [14 October 2002 Victorian Electricity Transmission Networks Revenue Cap – Draft Decision](#)
- [10 October 2002 ACCC Releases Guide on Telecommunications Dispute Resolution Processes](#)
- [10 October 2002 ACCC Appointment Consultation](#)
- [10 October 2002 ACCC Interim Decision Allows Myer/Grace Bros Concession Businesses to Participate in Discount Promotions](#)
- [9 October 2002 Peter Foster Joined to ACCC Weight Loss Case](#)
- [8 October 2002 ACCC Issues Decision on Collective Negotiations in NSW Chicken Meat Industry](#)
- [4 October 2002 Federal Court Verdict on Saatchi & Saatchi Element in N.R.M.A.](#)
- [4 October 2002 ACCC Stops False Professional Credentials Claim by Accounting Firm](#)
- [1 October 2002 ACCC Supports Consistent Pricing Principals for Mobiles](#)

## A newsletter for consumers and the consumer movement

Want to make a complaint or inquiry? Contact the ACCC Infocentre on **1300 302 502**. Want to forward suggestions for future articles? Email the Consumer express team at [express@acc.gov.au](mailto:express@acc.gov.au)

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### Consumer protection online

#### Internet dumping

##### What is it?

Internet dumping takes place when, unknown to the user, the Internet dialler software transfers the user from the current Internet Service Provider (ISP), which is usually accessed using an untimed local call, to a premium rate telephone number. In Australia that is usually a 190 number but sometimes 0011 international numbers are used.

The user is unaware that this has happened until they receive their next telephone bill!

##### How does it happen?

True Internet dumping is not common. More often the user has clicked on a pop-up window or has not read all the conditions on entering a new part of a site. The inexperienced user is most at risk—in particular children or those who have difficulties understanding the information on the screen.

Some websites are deliberately set up to confuse the user so that several windows will pop up making it hard to work out exactly what happened.

##### Me use porn sites ... never!

When consumers call the ACCC to complain about their unexpectedly huge phone bills they are usually surprised when asked if they have used any porn or similar sites.

Internet dumping is more likely to happen through porn and gambling sites. The sites are often very busy with many pop-up windows or banners making it easy to click on a window that will transfer the user from their initial dial-up number to a premium number.

Sometimes children in the household have unknowingly agreed to conditions that have transferred them to a premium rate number. The end result is that the parents receive a very large phone bill, sometimes up to \$4000.

##### Who can help?

- the Telecommunications Ombudsman—call 1800 062 058 or visit [www.tio.com.au](http://www.tio.com.au);
- 190complaints—a complaints service set up for complaints regarding 190 numbers—call 1300 139 955 or visit [www.190complaints.com.au](http://www.190complaints.com.au);
- state and territory fair trading agencies; or
- the ACCC via the ACCC Infocentre on 1300 302 502.

##### How to protect your household from dumping

An effective way to prevent Internet dumping is to have call barring set on the line for ID and 190 numbers. To find out your options call your telephone service provider.

Software that offers various levels of protection is also available. For more details contact a reputable software dealer.

The Federal Government has just announced proposed legislative changes designed to combat Internet dumping. For more details visit [www.dcita.gov.au](http://www.dcita.gov.au) or [www.aca.gov.au](http://www.aca.gov.au).

#### Website credibility causes global concern

Misleading, inaccurate and incomplete information on some websites is exposing consumers to risks, especially when they might be seeking health or financial help.

Consumers International and Consumer WebWatch recently announced the results of their assessment of the credibility of health and finance websites worldwide. They investigated sites providing information on breast cancer, prostate cancer and allergies; others providing information on financial services and products such as mortgages and life insurance; and 'deal-finder' sites comparing prices on computers, flights and car rental rates.

The study found that many sites failed to:

- give warnings on appropriate use of information (for example, to consult a professional before acting on the advice);
- disclose the authority or credentials of those giving the advice, or provide sources for the information;
- include privacy statements, information on how up-to-date their information was, or addresses and phone numbers; and
- distinguish between objective editorial comment and promotional content.

The results indicate consumers must use extreme caution when soliciting information from certain sites. Tips for consumers include:

- don't believe everything you read. Many websites hold out a exaggerated promises of great savings in time and money.
- don't rely exclusively on one site. Compare the information on several sites.
- check the site's background. If there is no background—sometimes called an 'About Us' page—consumers should be sceptical from the start. Look for a business name, a 'real-world' address, who owns the site, as well as partners and sponsors.
- if the site gives advice, look for the authority and credentials of the people behind the advice. If the site

recommends products and prices, check whether it explains how much of the market its searches cover.

- check what risks you might be taking by using the site. Consumers should provide only that personal information that they think is necessary to use the site or conduct the transaction. Read the site's privacy policy and always seek advice from a qualified professional if you are thinking of taking action as result of information from a website.

More information:

Consumers International's 'Credibility on the web' study: <http://www.consumersinternational.org>.

Consumer WebWatch's latest research and its guidelines for improving web site credibility: <http://www.consumerwebwatch.org>.

Consumers International press release: [International Survey: Web Credibility a global concern for consumers](#)

## Mirror Opera House website

The ACCC has filed proceedings in the Federal Court, Sydney alleging Mr Richard Chen operated a website that fraudulently mirrored the Sydney Opera House official website.

The website, <[www.sydneypopera.org](http://www.sydneypopera.org)>, allegedly purported to be the official booking site of the Sydney Opera House. The site is affiliated with other sites including [www.witestar.com](http://www.witestar.com), [www.worldsboxoffice.com](http://www.worldsboxoffice.com) and [www.scholarscircle.com](http://www.scholarscircle.com), all of which allegedly claim to be booking sites for various entertainment venues worldwide.

The ACCC alleges that several consumers from the United Kingdom and Europe tried to buy tickets through the imitation sites, and while their credit cards have been charged for tickets, they have either been overcharged or have not received them.

The ACCC alleges Mr Chen, a resident of New York, operates the site from US-based servers. So far he has not responded to the ACCC's proceedings.

The ACCC seeks to have the offending sites removed and has obtained interim court orders to this effect. The temporary orders also prohibit Mr Chen from creating, operating or maintaining similar sites.

People who wish to buy tickets online for events at the Sydney Opera House should visit the official website: <[www.sydneypoperahouse.com.au](http://www.sydneypoperahouse.com.au)>. More information: [http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=857](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=857)

## Recent actions

### Harvey Norman

The ACCC has instituted proceedings against three companies in the Harvey Norman group, two Harvey Norman corporate group individuals and 15 Harvey Norman franchisees, alleging bait advertising and misleading and deceptive conduct.

It is alleged that before the June 2000 introduction of the GST, national advertising was conducted for Harvey Norman Computers & Communications stores which featured a promotion for GST related software, Quicken Quickbooks, for \$199 with a bonus software bundle valued at more than \$900. The ACCC alleges the Harvey Norman Quicken Quickbooks promotion was advertised when the parties were aware that quantities of the bonus software were insufficient to meet consumer demand, breaching the

misleading and bait advertising sections of the Act. The ACCC further alleges that advertising in the firm's catalogue misled consumers about the eligibility for taxation benefits associated with buying Quicken Quickbooks software and digital cameras before the introduction of the GST, contravening sections 52 and 53 of the Act.

The ACCC is seeking declarations, injunctions, corrective public notices, findings of fact and an independent audit of the companies' trade practices compliance program. A directions hearing is scheduled for 13 December 2002 in the Federal Court, Melbourne. More information: [http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=858](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=858)

### Pest Free Australia Pty Ltd: plug-in pest free device

The ACCC has instituted proceedings in the Federal Court, Sydney against Pest Free Australia Pty Ltd, a company that supplies a device that claims to rid premises of rats, cockroaches and other pests.

The ACCC alleges that Pest Free made false and misleading representations about its 'Plug In Pest Free' electronic device in various television and newspaper advertisements, on its website and in brochures and promotional material. These included claims that the device, when plugged into a normal power supply outlet within the person's premises, will:

- prevent any noxious or destructive insects and vermin (cockroaches, mice, rats etc.) eating or drinking when near the device;
- cause the death by dehydration and/or starvation of such pests if they can't escape the effects of the device;
- generate vibrations that repel insects and vermin;
- provide continued pest protection;
- break the breeding and feeding cycles of pests; and
- disorientate pests, making them easier to catch.

The ACCC alleges that the representations are false and misleading because the device does not work as claimed and Pest Free has no reasonable basis for making the claims.

The ACCC seeks court orders including declarations, corrective advertisements, injunctions, refunds to consumers, removal of the product from sale and costs. A directions hearing is scheduled for 6 December 2002 in the Federal Court, Sydney. More information: [http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=862](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=862)

## Recent outcomes

### Wizard home loans

Wizard Mortgage Corporation Limited has been found by the Federal Court, Melbourne, to have engaged in misleading or deceptive conduct in a television advertisement for its home loan products. Justice Merkel also has made an order to restrain Wizard for 18 months from publishing or broadcasting advertisements for housing loans at specific interest rates with features the loans do not have.

The ACCC alleged that a television advertisement, broadcast in Melbourne, Brisbane and the Gold Coast during June and July 2001 for Wizard, misled consumers about the features that were available with Wizard's 'Rate

Breaker' 5.64 per cent interest rate housing loan. The features were: the capacity to have loan repayments directly credited from salary; the option of changing from monthly repayments to fortnightly or weekly repayments; and the absence of ongoing monthly fees. The features were only available to consumers who took out one of Wizard's other housing loans at a higher interest rate, not the Rate Breaker loan. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=842](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=842)

## Medical practitioners

### Independent report backs ACCC views on rural doctors

The ACCC has welcomed the affirmation by an independent review committee that the *Trade Practices Act 1974* does not fetter doctors in rural practice.

The Wilkinson Committee, which reviewed the impact of the Act on the recruitment and retention of doctors in rural and regional Australia, has backed the ACCC view that:

- medical rosters do not breach the Act;
- doctors do not need legislative exemption from the Act, which applies to all businesses to protect consumers and other businesses; and
- the application of the Act is not affecting the recruitment and retention of rural doctors.

The ACCC, and now the review committee, have clearly stated genuine rosters to ensure the supply of medical services after hours and on weekends are not contrary to the competition laws.

In issuing the report, the Prime Minister's comments supported 'further action by the ACCC to ensure that it is widely understood that genuine rosters which aim to ensure the availability of services do not (and have never been found to) breach the [Trade Practices] Act', and that 'better understanding of and compliance with the Trade Practices Act result from the Wilkinson Report'.

The ACCC will now move to implement the government's response to the report. In particular, the ACCC will finalise its guide to the Act written specifically for general practitioners, taking into account comments made by the review. The guide has been drafted after extensive consultation with industry bodies and rural GPs, and will ensure general practitioners are correctly informed about the application of competition law to their practices. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=856](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=856)

### No-gap billing boycott breaches competition law

The Federal Court, Brisbane has granted consent orders finalising an ACCC action against three obstetricians, Dr Mark Leyden, Dr Stephen Robson and Dr Paul Khoo for a boycott of no-gap billing. The ACCC alleged Dr Leyden, Dr Khoo and Dr Robson made arrangements in December 2000 and January 2001 that none of them would provide private in-hospital obstetrics services to their patients on a no-gap billing basis.

The boycott resulted in about 200 patients having to pay a gap for the in-hospital medical expenses associated with the birth of their child that they would not have had to pay if the conduct had not occurred. As a result of the ACCC

action, almost \$97 000 will be repaid to affected patients in and around Rockhampton.

The Federal Court granted consent orders including findings that all three obstetricians contravened the *Trade Practices Act 1974* and/or the Competition Code of Queensland. The orders also included injunctions restraining similar future conduct, the publication of notices and contributions by the doctors to the ACCC's legal costs. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=844](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=844)

## Health insurance updates

### Westfund Health Insurance

The Federal Court, Sydney has declared that Western District Health Fund Limited, trading as Westfund, has engaged in misleading and deceptive conduct in advertising its health insurance products to consumers.

In January 2002 the ACCC, under a delegation from ASIC, instituted proceedings against Westfund for advertising that appeared on television between February and September 2001 and for misleading or deceptive representations made on its website.

In both the television advertisement and on the website, Westfund stated that the fund would pay all hospital and medical expenses associated with all operations and that members would not be required to pay any excess or co-payment. In fact, Westfund could not pay all medical expenses for all operations and there were circumstances in which a member may have to pay an excess or a co-payment. These representations also included two fine print disclaimers which failed to detract from the overall impression conveyed by the advertisement that a Westfund member would not be required by the fund to make any payment to cover hospital or medical expenses associated with any operations.

As well as declaring that Westfund's conduct was misleading and deceptive, the other Federal Court orders, all made with Westfund's consent, include an order that Westfund write to consumers who bought health insurance from the fund between 15 February 2001 and 22 September 2001, informing them that they may have been misled by the advertisements and/or the website and that Westfund, for those members, offer to refund, to the extent possible:

- hospital expenses not paid by Westfund;
- certain medical expenses;
- any excess or co-payment paid by the member; and
- the cost of membership for those members who, as a result of having been misled, chose to leave Westfund.

The court also granted:

- an order that Westfund publish a corrective statement on its website;
- an injunction preventing Westfund from making representations in the future about health insurance benefits without clearly and prominently displaying the extent to which an insured person is required to make any payment in respect of hospital and/or medical expenses associated with operations; and
- an order requiring Westfund to establish, maintain and have audited, a trade practices compliance program.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=834](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=834)

## Previous health insurance cases: updates

### Medibank Private

The ACCC is seeking special leave to appeal to the High Court the decision of the Full Federal Court in September to uphold an application by Medibank Private to strike out aspects of the ACCC's claims for remedial orders. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=824](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=824)

### Medical Benefit Funds of Australia Limited (MBF) and John Bevins Pty Ltd

This case, which began in the Federal Court earlier this year, concerned print and television advertisements containing pregnancy-related images. The ACCC alleged that fine print in the advertisements—that the 12-month waiting period for pregnancy-related services would not be waived—was inadequate and unlikely to come to the attention of consumers.

The matter was heard in June 2002. Justice Hill handed down his decision on 9 September 2002 making an order that the respondents pay the ACCC's costs and indicating that he proposed to make orders that MBF undertake corrective advertising on television and in newspapers because the original television and billboard advertisements were misleading. The matter was stood over to 20 September 2002 to hear submissions from the parties as to the form of orders to be made. Following those submissions the Federal Court made orders for corrective advertising and this decision was appealed by MBF on 16 October 2002.

The Federal Court also found that John Bevins Pty Ltd, MBF's advertising agent, was knowingly concerned in the alleged contraventions. This aspect of the case was also appealed on 23 October 2002. More information: [http://203.6.251.7/accc.internet/media/search/view\\_media.cfm?RecordID=251](http://203.6.251.7/accc.internet/media/search/view_media.cfm?RecordID=251)

### NRMA/Saatchi & Saatchi (ad agency)

In July this year the Federal Court in Sydney made orders by consent against NRMA Health Pty Ltd (also trading as SGIC Health and SGIO Health) and NRMA Insurance Ltd about advertisements which appeared in various newspapers in September 2001 and on its website.

The ACCC also alleged that Saatchi & Saatchi, NRMA's advertising agency, was involved in the contraventions. On 3 October 2002 Justice Jacobsen dismissed the ACCC's application as it related to the involvement of Saatchi and Saatchi. An appeal to the Full Federal Court was filed on 24 October 2002. More information:

[http://203.6.251.7/accc.internet/media/search/view\\_media.cfm?RecordID=815](http://203.6.251.7/accc.internet/media/search/view_media.cfm?RecordID=815)

## November media releases

**29 November 2002** [Federal Court Declares FREE2AIR Misled, Harassed Consumers](#)

**28 November 2002** [ACCC Interim Decision Allows Public Liability Insurance Scheme for Not-for-Profit Organisations](#)

**28 November 2002** [ACCC Satisfied with Gas Transmission Ring Fencing Reports](#)

**28 November 2002** [ACCC not to Oppose IAG Acquisition of Aviva's CGU Insurance](#)

**27 November 2002** [ACCC Approves Change to Contracting Provisions to Cover Power Shortfalls](#)

**27 November 2002** [ACCC Enables a Smooth Introduction of Full Retail Competition to S.A.](#)

**27 November 2002** [ACCC Institutes Against S.A. Fire Protection Companies](#)

**25 November 2002** [ACCC Takes Court Action Against Beauty Products Supplier](#)

**25 November 2002** [QANTAS - Air New Zealand Proposal Requires 'Close Scrutiny': ACCC](#)

**22 November 2002** [ACCC Clears But Will Monitor Airline E-Commerce Joint Venture](#)

**20 November 2002** [Major Initiative to Inform Consumers How to Exploit Petrol Price Cycles Launched by ACCC](#)

**20 November 2002** [Consumers' Attention Drawn to Copy Protected CDs](#)

**19 November 2002** [ACCC Chairman, Professor Allan Fels, AO, to Step Down June 30 2003](#)

**18 November 2002** [ACCC Issues Victorian Gas Transmission Decisions](#)

**15 November 2002** [ACCC Institutes Against Pest Free Australia Pty Ltd Over its Plug-in Pest Free Device Alleging Misleading Conduct](#)

**15 November 2002** [Telstra 'Freecall' Misled, Deceived Consumers: Say G'day Product: Supplementary Release\\*](#)

**15 November 2002** [ACCC Rejects Caltex Claims, Confident in Challenge](#)

**15 November 2002** [ACCC Cautions Against Industry-Specific Regulation in Energy Markets](#)

**15 November 2002** [Telstra 'Freecall' Misled, Deceived Consumers](#)

**14 November 2002** [ACCC Reviews Arrangements Between International Airlines – First Travel Agents, Next Air Cargo](#)

**13 November 2002** [ACCC Accepts Foxtel-Optus Pay TV Deal](#)

**13 November 2002** [ACCC Allows Telstra Proposed Pay TV Notification to Stand](#)

**12 November 2002** [ACCC Institutes Against Harvey Norman Holdings Pty Ltd](#)

**11 November 2002** [Mirror Opera House Website: ACCC Acts](#)

**11 November 2002** [Prime Minister Issues Independent Review Report Which Backs ACCC Views on Doctors](#)

**8 November 2002** [ACCC Interim Decision Allows Greenhouse Gas, Ozone Recovery Program in Time for Summer](#)

**8 November 2002** [ACCC Facilitates Smooth Introduction of Full Retail Competition in S.A.](#)

**8 November 2002** [ACCC Proposes to Allow CSR Concrete Cartage Protocols](#)

**7 November 2002** [ACCC Approves Change to Contracting Provisions to Cover Power Shortfalls](#)

**7 November 2002** [ACCC Proposes Extension of Technical Standards for Queensland Electricity Derogations](#)

**7 November 2002** [High Court Overturns Full Federal Court Decision that Section 155 of Trade Practices Act 1974 Overrides Legal Professional Privilege](#)

**7 November 2002** [ACCC Approves Changes to Transgrid's Revenue Cap](#)

**5 November 2002** [Federal Court Fines Publisher for Wrongfully Accepting Payment for Advertising](#)

**4 November 2002** [ACCC Issues Revised Portability Draft Report](#)

**1 November 2002** [ACCC Institutes Against Baxter Healthcare Pty Ltd](#)

**1 November 2002** [Guidance On Natural Gas Projects To Regional Communities](#)

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### Petrol prices—getting the best deal

Many families will be travelling interstate by car during the holidays. By staying informed about petrol price movements, you can save on your petrol bill.

The ACCC has launched a major initiative on its website <[www.acc.gov.au](http://www.acc.gov.au)> to tell consumers about [petrol price cycles](#) in the major metropolitan cities (look for 'Petrol Price Cycles' under latest news).

Many consumers are already aware that the price of petrol moves in cycles, allowing them to buy when prices are relatively low. The difference in prices between the bottom of the price cycle and the top can be substantial. In Melbourne, for example, the average increase from the bottom to the top of price cycles so far this year has been 6.7 cents per litre. By buying at the bottom of the price cycle, consumers in Melbourne could have saved themselves around \$174 a year.

By publicising information about price cycles the ACCC hopes to help more consumers exploit the cycle.

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=869](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=869)

### In the consumers' interest

#### Two-price advertising

We've all been there: you see the big signs advertising the sale and walk into the shop to see if you can spot a bargain. You pick up an item with a swing tag that has one price crossed out, and a much lower price immediately below. It's a big reduction, so you decide to take advantage of the offer.

But are you really making a saving?

Two-price advertising refers to the practice of showing the previous price of an item as well as the current price (usually lower), to show consumers the price reduction or saving.

As a consumer you should also take price claims with a grain of salt; shop around and compare prices even more carefully than you would at other times of the year. You might also want to think about whether the 'discounted price' actually represents good value for money, regardless of whether it seems like a good deal because of the price difference.

When determining whether a discount was genuine, the ACCC will consider such factors as the length of time, if any, that the product was available for the original price.

#### Allans Music - false advertising leads to big fine

Allans Music Group Pty Ltd has been fined a total of \$80 000 in the Federal Court, Adelaide.

Allans pleaded guilty to nine counts of making false or misleading representations about price. Nine other counts were withdrawn. Allans made the false 'was/now' price claims in its Christmas 2000 catalogue.

Justice Tamberlin found that Allans advertising was 'false in the sense that for all practical purposes, the items in question had not been sold in the pre-Christmas period at the "was" price but rather at prices substantially below the claimed "was" price'. He also commented that the catalogue 'was plainly designed to attract custom on a false basis during a key marketing period'.

The ACCC regarded the conduct as particularly blatant and reckless and therefore pursued it as a criminal prosecution. It is the first time a retailer has been convicted by the Federal Court for the use of false 'was/now' advertising.

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=904](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=904)

#### Duty Free group

The ACCC has accepted court enforceable undertakings from the Nuance Group Australia Pty Ltd over Downtown Duty Free and City International Duty Free's misleading 'was/is' style advertising earlier this year.

The items advertised included watches, conventional and digital cameras, palm pilots, films, portable CD players, camera lenses and a recording mini-disc.

The ACCC alleged that City International Duty Free and Downtown Duty Free advertised savings on these products when they had not been advertised at the higher prices for a reasonable time before the sale.

The ACCC was also concerned that both stores claimed the products were exclusive to each store, when this was not so.

Nuance has accepted that it had engaged in misleading and deceptive conduct and made false or misleading representations, and has undertaken:

- that it will not represent that particular price savings are available when the products have not been offered at the higher price for a reasonable period before the sale;
- that it will not falsely represent that products are exclusive to their stores;
- to publish corrective newspaper advertisements and place corrective notices in-store for three weeks;
- to offer full refunds to affected consumers; and

- to implement a trade practices compliance program.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=885](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=885)

## Watch out for Copy protected CDs

CDs are a popular Christmas gift, but you might be disappointed if they don't work the way they're supposed to. The ACCC has renewed its warning to consumers following advice from a major record label that it has introduced copy protection measures on some CDs released in Australia from November.

Under Australian copyright law, consumers are not permitted to copy CDs, regardless of whether the copies are for personal use.

The introduction of the copy control technology means that consumers may no longer be able to 'burn' copies of CDs where the technology has been used. The music industry is trying to crack down on unauthorised copying of sound recordings.

Although the ACCC welcomed this initiative as a legitimate method of preventing music piracy, it is keen to ensure that consumers are fully aware of any technical restrictions on the use of these discs before they pay for them.

The ACCC first warned consumers in December last year to exercise caution when buying CDs after becoming aware that discs released in the United States and Europe bearing early versions of the copy control technology could not be played in computers, DVD players or car stereos.

The ACCC wants to ensure that manufacturers, retailers and importers do the right thing by informing consumers of any restrictions on what can be done with a copy protected CD.

When the performance characteristics of a CD are being changed it is appropriate to place a warning on the outer packaging of the disc to draw consumers' attention to that change. Manufacturers and importers must also ensure that retailers are educated about the existence and effect of the technology, so that they, in turn, can inform consumers.

If, as a result of inadequate disclosure on the product packaging or at the point of sale, you believe that you can play a CD in a certain manner, but subsequently discover you cannot, you can return it to the place of purchase and get a refund. More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=870](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=870)

## Product safety

### Mini-cup jellies banned

Any mini-cup jelly confectionaries containing konjac should be left **off** your Christmas shopping list.

On 21 August 2002 an 18-month temporary ban under section 65C(5) of the Trade Practices Act was applied to the supply of mini-cup jelly confectionaries containing konjac.

Similar confections not containing the banned ingredient are available, and these have not caused any alarm.

The Parliamentary Secretary to the Treasurer, Senator Ian Campbell, announced the ban following a number of deaths in Australia and overseas from consumption of the product. The ban applies to any mini-cup jellies containing the

ingredient konjac, also known as glucomannan, conjac, konnyaku, konjonac, taro powder or yam flour.

The ACCC has already acted to prevent the sale of the banned jellies. The ACCC instituted proceedings in the Federal Court in Perth against Trans Oriental Import, Export Pty Ltd and one of its directors, Mr Thai Tran, alleging the company sold the banned mini-cup jellies to consumers.

The ACCC alleges that on 1 November 2002 the company supplied two mini-cup jellies containing the banned ingredient konjac from the Trans Oriental Supermarket in Leederville. The products are Coconut Jelly (bar code number 4710174043890) and Conjac Coconut Jelly (bar code number 4710174056159).

The ACCC alleges that conduct is misleading and deceptive, and breaches the product safety provisions of the Trade Practices Act. A directions hearing is set for 12 February 2003 before Justice Carr.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=900](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=900)

## What does Internet access really mean?

As a consumer you should be careful when selecting an ISP, to ensure that it will best meet your Internet needs. Don't sign any contract or agree to receive Internet services until you have read all the terms and conditions.

The ACCC recently took action against an ISP who misled, harassed, and took advantage of consumers.

The Federal Court in Brisbane has found that Internet TV Australia Pty Ltd (receiver and manager appointed), formerly trading as Free2aiR, and its director, Mr James Young, had engaged in misleading and deceptive conduct, unconscionable conduct and harassment and coercion.

The ACCC alleged that Free2aiR represented to consumers that:

- its Internet services included free Internet access time;
- there was a once-off set-up fee; and
- no ongoing fees and charges were payable for the Internet access services other than a charge for any downloads in excess of a specified amount each month.

The court declared, by consent, that Free2aiR did not bring important terms and conditions to the attention of consumers before they subscribed. These conditions included one that purported to allow Free2aiR to charge customers a quarterly administration fee in addition to the set-up fee. Some consumers later received quarterly administration invoices demanding further payment for their Internet services and threatening disconnection if they did not pay.

The court also found that Free2aiR had engaged in unconscionable conduct by threatening to disconnect customers if they contacted Free2aiR to query the administration fee, and by deducting administration fees from customers' credit cards without express authority.

Free2aiR was also declared to have used undue harassment and coercion by threatening to disconnect customers who failed to pay administration fees. Free2aiR also advised customers that outstanding administration fees would be referred to a debt collection agency for recovery which may

involve additional charges and result in damage to the customer's credit history with credit reference agencies.

The court declared that the sole director of Free2aiR, Mr James Young, was knowingly concerned in, or aided, abetted and procured each of the breaches. The consent orders also included injunctions restraining the respondents from similar conduct in the future, and costs orders. The receiver did not oppose the making of the orders.

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=880](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=880)

## Virgin Mobile ads found to be false and misleading

ACCC action against Virgin Mobile (Australia) Pty Ltd has resulted in the Federal Court, Perth, finding that the company made false and misleading representations and also failed to state the full cash price of mobile phones in national advertisements for its Dial High Club mobile phone packages.

Virgin Mobile's advertisements such as 'Nokia 8310 on us, handcuffs off you', 'No long-term contracts', and 'Leave when you like' implied to consumers that they were not obliged to pay the specified monthly call charges for any particular period and that they could leave their contract without making any additional payment on termination.

In fact, unless consumers continued to pay the monthly call charges for the full 24 months, they had to pay out the full cost of the telephone handset. Virgin Mobile also failed to disclose to consumers the cash price of the handset (up to \$1039 for one package) or the minimum cost of joining the Dial High Club package (as high as \$1069 for one package).

Apart from declaring that Virgin Mobile made false and misleading representations, the Federal Court also made other orders, all with Virgin's consent, requiring Virgin Mobile:

- to write to affected consumers about the court's findings, explaining the relevant costs and consequences of their signing up to the packages
- to publish a public notice in newspapers nationally as well as on its website
- to state the full cash price of mobile phones and the full cash price or minimum cost of mobile phone packages, as well as the method by which any amount payable on termination is calculated, in its future advertisements
- to create a website to inform consumers of the obligations imposed by the Trade Practices Act on advertisers who promote mobile phone and phone packages
- to implement, maintain and have audited a trade practices compliance program
- to pay the ACCC's costs.

If you are considering getting a mobile, you should read all contracts carefully before you sign. Make sure you know all the fees, charges and call costs, and if you don't understand anything seek clarification.

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=899](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=899)

## Consumer protection on-line

### Internet shopping— don't get caught in the web

Over the holiday season, many people will be surfing the net for gifts and bargains. Buying online has many advantages: the global marketplace can offer more competitive prices, the convenience of shopping at home, or a wider range of choices. However, during this high spending time of year, you should be especially careful of unscrupulous and anonymous traders.

The ACCC will closely monitor complaints about e-commerce during December and January—however you can take the following steps to help ensure your online experience is successful.

- check the site carefully for the trader's full contact details including a street address;
- check delivery times, stock availability and if the company has a policy of substituting a product if the one ordered is unavailable;
- verify any seals/badges of approval or affiliation with codes of conduct. Usually there is a link from the badge itself which should provide the necessary information to show that the trader is genuine;
- use sites that have secure online payment. This is usually shown by an unbroken lock or key at the bottom of the screen or as 'https://' in the webpage address. It is also useful to confirm the payment in some way either by phone or email. Some sites have a return window that confirms the order once it is placed giving the consumer a clear understanding of the total cost before finally agreeing to it. Consumers should print out this confirmation or save it for future reference;
- check how the company deals with personal information. In Australia privacy provisions also apply to online traders;
- read all the terms and conditions carefully. Traders sometimes use these to limit liability;
- check for warranties, the trader's refund policies and any dispute resolution processes. In Australia traders are bound by the statutory warranty provisions in the Trade Practices Act; and
- check that the product is legal in Australia. As online consumers cannot personally inspect goods or services it is important that online traders provide accurate information on their website.

To make a complaint call the ACCC Infocentre on 1300 302 502 or go online at [www.accc.gov.au](http://www.accc.gov.au).

More information:

[http://203.6.251.7/acc.internet/digest/view\\_media.cfm?RecordID=906](http://203.6.251.7/acc.internet/digest/view_media.cfm?RecordID=906)

From last month's *Consumer Express*:

#### Website credibility causes global concern

Misleading, inaccurate and incomplete information on some websites is exposing consumers to risks, especially when they might be seeking health or financial help.

Consumers International and Consumer WebWatch recently announced the results of their assessment of the credibility of health and finance websites worldwide. They investigated sites providing information on breast cancer, prostate cancer and allergies; others providing information

on financial services and products such as mortgages and life insurance; and 'deal-finder' sites comparing prices on computers, flights and car rental rates.

More information:

Consumers International's 'Credibility on the web' study: <http://www.consumersinternational.org>.

Consumer WebWatch's latest research and its guidelines for improving web site credibility: <http://www.consumerwebwatch.org>.

Consumers International press release: [International Survey: Web Credibility a global concern for consumers](#)

## Boycotts

### Alleged bulk billing boycott

The ACCC has instituted proceedings in the Federal Court in Melbourne against AK Freund Pty Ltd and Dr Abraham Freund, for allegedly attempting to restrict the ability of their competitors to offer bulk billing, and after-hours medical services.

The ACCC seeks court orders including declarations, injunctions, the implementation of a trade practices compliance program, findings of fact and costs. A directions hearing is set for 7 February 2003.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=883](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=883)

From last month's *Consumer Express*:

#### No-gap billing boycott breaches competition law

The Federal Court in Brisbane granted consent orders finalising an ACCC action against three obstetricians, Dr Mark Leyden, Dr Stephen Robson and Dr Paul Khoo, for a boycott of no-gap billing. The ACCC alleged Dr Leyden, Dr Khoo and Dr Robson made arrangements in December 2000 and January 2001 that none of them would provide private in-hospital obstetrics services to their patients on a no-gap billing basis.

More information:

[http://203.6.251.7/accc.internet/digest/view\\_media.cfm?RecordID=844](http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=844)

## December media releases

**23 December 2002** [ACCC Not to Oppose John Holland's Proposed Acquisition of Transfiled Construction and Walter Construction](#)

**23 December 2002** [ACCC Accepts Cosmetic Relabelling Program by Private Formula](#)

**23 December 2002** [Yellow Pages Service Misled Consumers](#)

**23 December 2002** [ACCC Notes Withdrawal of Basic Bank Account Agreement Proposal](#)

**20 December 2002** [Balgee Joined to ACCC Petrol Price-Fixing Case](#)

**20 December 2002** [ACCC Final Determination on Market and System Operations Rules to Benefit Victorian Energy Industry](#)

**20 December 2002** [Full Federal Court Disapproves of Dell's Earlier Price Advertising](#)

**19 December 2002** [ACCC and Milk Companies](#)

**19 December 2002** [Product Safety Warning for Pool Toys](#)

**19 December 2002** [ACCC Gives Certainty to Doctors Within General Practices on Fee-Setting](#)

**19 December 2002** [ACCC Issues Discussion Paper on Telstra and Foxtel's Analogue Access Undertakings For Pay TV](#)

**16 December 2002** [Container Stevedoring Costs Reach Historic Low](#)

**16 December 2002** [ACCC Accepts Undertakings from Hoyts, Greater Union and Village on Cinema Advertising](#)

**16 December 2002** [ACCC Watches Internet Trading Over Christmas/New Year](#)

**16 December 2002** [ACCC Rejects Basic Bank Account Agreement Proposal: Does Not Go Far Enough](#)

**16 December 2002** [ACCC Issues Revenue Cap Decision for Victorian Electricity Transmission Network](#)

**13 December 2002** [ACCC Decision will Reduce Electricity Transmission Charges in South Australia](#)

**12 December 2002** [Virgin Mobile Advertisements Found to be False and Misleading](#)

**12 December 2002** [Allans Music Fined \\$80,000 for Misleading Christmas Catalogue](#)

**12 December 2002** [ACCC's Interim Decision Maintains Life Insurance Bar on Genetic Testing](#)

**12 December 2002** [ACCC Institutes in Product Safety Matter](#)

**11 December 2002** [ACCC Issues N.T. Amadeus Basin To Darwin Pipeline Final Decision](#)

**10 December 2002** [ACCC Concludes Investigation into Allegations of Unlawful Conduct in Art Markets](#)

**10 December 2002** [Future Directions of Trade Practices Law and their Impact Examined in Video Panel Discussion](#)

**9 December 2002** [ACCC Proposes to Authorise New Technical Standards for National Electricity Code](#)

**9 December 2002** [National Electricity Market - Rebidding Code Changes: Final Determination](#)

**9 December 2002** [QANTAS/Air New Zealand Application to the ACCC Available Soon](#)

**9 December 2002** [ACCC Proposes to Allow Inghams to Continue Collective Negotiations with S.A. Chicken Growers](#)

**9 December 2002** [ACCC Takes Court Action Against Alleged Attempt to Fix Flour Prices by George Weston Foods Limited](#)

**6 December 2002** [ACCC Allows Queensland to Continue Forward-Looking Calculation of Electricity Loss Factors](#)

**6 December 2002** [Federal Court Declares Daewoo Engaged in Unconscionable Conduct](#)

**5 December 2002** [ACCC Issues Final Determination on Nurses in Victoria](#)

**5 December 2002** [Queensland Newspapers Pty Ltd Offers Undertakings to Allow Internet Advertising in Classifieds](#)

**5 December 2002** [Domain Name Reseller to Provide Refunds Following ACCC Federal Court Action](#)

**4 December 2002** [Duty Free Group Gives Undertakings Over Misleading Advertising](#)

**3 December 2002** [ACCC Takes Action Against Berwick Springs G.P. for Alleged Attempt to Induce Boycott of Bulk-Billing](#)

**2 December 2002** [Federal Court Orders Suspended Sentence for Internet Traders for Contempt](#)

**2 December 2002** [ACCC Issues Latest Broadband Service Figures](#)

**2 December 2002** [Swiss Canyoning Tragedy Sparks Procedure Review by Contiki Australia](#)