



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/1844
Contact Officer: Gavin Jones
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17 June 2009

Mr Hank Spier
Spier Consulting
92 Jervois Street
DEAKIN ACT 2600

Dear Mr Spier

**Authorisation application A91106 submitted by the
Australasian College of Cosmetic Surgery (the College)**

I refer to your email of 1 June 2009 responding to the Australian Competition and Consumer Commission's (the ACCC) decision to place a submission received in relation to the above listed application for authorisation on the ACCC's public register in a redacted form.

A copy of your email has been placed on the public register at your request.

In your email you state that Dr Daniel Fleming, the Immediate Past College President, remains of the view that he was misled when agreeing to a request by the ACCC for an extension of time to consider the College's application. You state that Dr Fleming was of the view that the extension would only allow further consultation on what you characterise as minor amendments to the Code resulting from queries raised by the ACCC. You state that Dr Fleming was of the view that further submissions would not be allowed on other matters.

As you are aware the College amended its application for authorisation on 28 April 2009. At the time of doing so the College also provided further information about how the Code will operate and be enforced.

On 29 April 2009 the ACCC sought the College's agreement, pursuant to section 90(10A) of the *Trade Practices Act 1974* (the Act), to extend the relevant period for consideration of the College's application by six weeks until 30 July 2009.

In requesting the extension the ACCC stated that it considered the extension appropriate to facilitate consultation with interested parties about the amended application.

On 4 May 2009 the College agreed to the extension and the ACCC wrote to interested parties seeking their views about the amended Code.

In the letter inviting comments it was noted that, in particular, the ACCC was interested in views about the most recent (28 April 2009) amendments to the Code and the clarification provided by the College about how the Code will operate and be enforced.

However, as the decision maker the ACCC is obliged under section 90(2) of the Act to take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a state or by any other person. Therefore, regardless of the reason for the extension, if an application is before the ACCC then, pursuant to section 90(2), the ACCC must take that submission, if relevant, into account. To do otherwise could result in a finding by a court that the ACCC's decision to grant an authorisation is invalid as it failed to follow the legal requirements set out in the Act.

A copy of this letter has been placed on the ACCC's public register.

Should you have any queries in relation to this matter, please do not hesitate to contact me on (02) 6243 1132 or John Rouw on (03) 9290 1402.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line that tapers to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch