

Dr Richard Chadwick
General Manager
Adjudication
ACCC
GPO Box 3131
Canberra City ACT 2601

23 June 2009

Dear Dr Chadwick,

ACCS AUTHORISATION

I refer to the ACCC Determination in the ACCS matter. The following comments are mine and not those of the ACCS. The ACCS will consider such issues once the appeal period is over. Nevertheless the ACCS is moving to implement the Code.

The ACCS has appointed the Complaints Panel and the Chairs of the Code Administration and External Appeals Committee. Other matters are also under way in accordance with the Implementation Plan.

However as the conditions imposed by the Commission will require some amendments to the Code this will slow down some process but not unduly. Amendments need to be endorsed by the ACCS Council.

The ACCS members were informed about the Code and its impact very recently but that was the Code before the ACCC conditions.

I have to say that I have some concerns about Conditions that rewrite the Code but will not pursue those issues unless there is an appeal.

I will say though that I am concerned about the ACCC comments about so called inconsistencies with the Victorian Advertising Guidelines, particularly as those issues were not raised in any detail with the ACCS. Further, Condition 7 applies nationally, albeit the discussion in the body of the ACCC determination appears to seat this issue in inconsistencies with the Victorian Guidelines. In doing that the Commission is effectively "legislating" the Victorian Guidelines to have national effect but only for ACCS members.

As to Condition 8, I am puzzled by what that means? The Condition draws attention to Victorian Guidelines that are part prohibition, part homily. The Victorian authorities appear not to enforce the provision; does the ACCC Condition mean that it becomes a surrogate for the Victorian authorities? That is particularly of concern as these provisions are potentially anti competitive and are meant to be.

Yours truly,

Hank Spier