

Guidance and information

ACCC inoculates the net

The Commission coordinated the 5th international Internet sweep day on 29 January 2001, leading 58 agencies from 19 countries in a search for websites making misleading marketing claims about health products.

In a week-long campaign, 1410 websites were flagged by investigators as 'suspicious'. Consumer protection and health authorities all over the world have responded by sending warning emails and asking site operators for explanations. Further actions may include investigations, administrative settlements and court action.

Of the 1410 suspicious websites identified:

- 77 were based in Australia
- 48.5 per cent of sites used testimonials to sell the product or service. Of these:
 - 38.6 per cent used testimonials from relevant experts or professionals
 - 70.3 per cent used testimonials from other users of the product or service
- 37.7 per cent of sites referred to clinical studies or scientific experiments
- 13.9 per cent of sites used 'before and after shots' to promote purchase

- 13.2 per cent of sites claimed approval, authorisation or affiliation with an official agency. Of these, more than half (52.6 per cent) were agencies outside the relevant jurisdiction
- 'cures' for HIV/AIDS were few (only 22 sites world wide—2.1 per cent of the suspicious sites)
- 'cures' for cancer were more of a concern (149 sites—14.3 per cent of the suspicious sites)
- 'cures' for arthritis were found on 116 sites—11.1 per cent of the suspicious sites.

Orally ingested products and dietary products formed the majority of suspicious sites. Many products fell into both of these categories, which combined made up 69.9 per cent of the suspicious sites.

Of particular concern are supposed 'cures' for diseases for which there is no known cure, especially those leading to consumers abandoning traditional treatments. Also of concern are pills and potions that are claimed to have different time delays until they become effective, often meaning that



▲ Adelaide—Sitting: Jim Stewart, SA Office of Consumer and Business Affairs (OCBA); Middle: Bob Weymouth, Regional Director, ACCC SA, Right: David Schomburgk, OCBA

◀ Canberra—ACCC Chairman, Professor Allan Fels, with media representatives and an officer sweeping health sites

consumers have to purchase a second bottle before realising a cure is ineffective.

Sweeps are an activity of the International Marketing Supervision Network (IMSN), a network of consumer protection authorities of 30 countries. Its main objective is to take action to prevent and redress deceptive marketing practices with an international component. The Commission assumes the presidency of the IMSN for the financial year 2002–03, with the first Australian meeting to be held in September 2002.

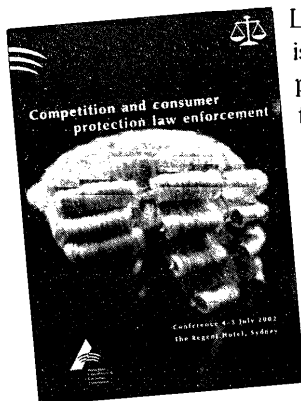


◀ Brisbane—
Foreground:
Queensland Health
Rights Commission
officer; Seated back:
Sophie Evans,
ACCC Qld;
Standing: Nyree
Harris, ACCC Qld

◀ Perth—Left: Steve Bray, Assistant Director, ACCC WA;
Middle: Patrick Walker, Commissioner, Department of
Consumer and Employment Protection, WA; Right:
David Kerslake, Director, WA Office of Health Review

ACCC Enforcement Conference 4–5 July 2002

Given that enforcing Australia's competition and consumer protection laws involves both private commercial and public interest litigation, how does the Commission set the public enforcement priorities? Hear from those enforcing the law, including a feature presentation by Commission Chairman Professor Allan Fels, on how the agency prioritises its enforcement work and its litigation trends.



Leniency policy—what is it and how is it applied by Australia's trade practices regulator? What are the trends internationally in competition and consumer law enforcement? How does Australia's major competition and consumer agency deal with such trends?

These and other matters of major public policy for corporate lawyers, compliance professionals, private and government sector lawyers

dealing in trade practices law will be addressed at the Commission's inaugural conference on competition and consumer protection law enforcement.

Developments in international and domestic cartels, agreements that lessen competition, misuse of

market power and boycotts will also be important topics for discussion.

The judiciary recognises that the Trade Practices Act provisions involve matters of high public policy. Hear from those active in industry and government matters.

Valuable insights on the international perspective will be presented by the United States' Department of Justice's Deputy Assistant Attorney General, Mr Jim Griffin, and the United Kingdom's Office of Fair Trading Director of Cartel Investigations, Mr Adrian Walker-Smith. The community and media view will be reviewed by *The Bulletin's* Mr Fred Brenchley.

Changes to the law to achieve more effective enforcement outcomes and a presentation on a more comprehensive leniency policy for Australian competition law enforcement by Commissioner Sitesh Bhojani will be among the topics for debate.

This conference provides a unique opportunity to hear and discuss the outcomes, trends and developments in the public enforcement of Australian, US and UK competition and consumer protection laws.

If you would like further information or would like to register for the conference please contact Ms Kirstin Stannard by phone: (02) 6243 1170, fax: (02) 6243 1158 or email: <kirstin.stannard@accc.gov.au>.

Competition and consumer protection law enforcement conference program 4–5 July 2002, Regent Hotel, Sydney.

Day 1 — Session 1

Chair: Sitesh Bhojani
Commissioner, ACCC

8 am — 8.45 am Coffee and registration

8.45 am — 9 am

Welcome and opening

Sitesh Bhojani, Commissioner ACCC

9 am — 9.45 am

ACCC enforcement philosophy and priorities

Professor Allan Fels AO, Chairman, ACCC

9.45 am — 10.15 am

Vision for enhancing effective enforcement/priorities

Panel — *Louise Castle, Allens Arthur Robinson*

John Kench, Blake Dawson Waldron

Louise Sylvan, Australian Consumers Association

10.15 am — 10.45 am Questions and discussion

10.45 am — 11.15 am Morning tea

Day 1 — Session 2

Chair: Russell Miller
Minter Ellison

11.15 am — 11.45 am

Public enforcement vs private enforcement: a practitioner's perspective

Allan Myers QC

11.45 am — 12.15 pm

Consumer protection litigation: major developments and practical tips for practitioners

Peter Cashman, Maurice Blackburn Cashman

12.15 pm — 12.35 pm

Panel members will comment on Allan Myers' and Peter Cashman's presentations

Panel — *Liza Carver, Gilbert and Tobin*

Lee Hollis, ACCC

12.35 pm — 12.45 pm Questions and discussion

12.45 pm — 2 pm Lunch

Day 1 — Session 3

Chair: John Martin
Commissioner, ACCC

2 pm — 2.45 pm

US Department of Justice leniency policy: Effectiveness and practical issues for practitioners and enforcing competition laws — the American approach

Jim Griffin, Department of Justice, USA

2.45 pm — 3 pm

UK leniency policy: a commentary

Adrian Walker Smith, Office of Fair Trading, UK

3 pm — 3.30 pm

The ACCC's leniency policy

Sitesh Bhojani, Commissioner, ACCC

3.30 pm — 3.45 pm Questions and discussion

3.45 pm — 4.15 pm Afternoon tea

4.15 pm — 4.45 pm

Leniency policy: what it means for practitioners and clients

Panel — *Michael Corrigan, Clayton Utz*

Christopher Hodgekiss, NSW Bar Association

Don Davies, Phillips Fox

4.45 pm — 5.15 pm

What does it all mean for the community? Issues in communicating the value of competition and consumer protection law enforcement to the public

Fred Brenchley, The Bulletin

5.15 pm — 5.30 pm Questions and discussion

7 pm — 7.30 pm Pre dinner drinks

7.30 pm — 10 pm Conference dinner

Day 2 — Session 4

Chair: Ross Jones
Commissioner, ACCC

9 am — 9.30 am

Moving towards a criminal regime: ACCC proposals for criminal penalties for hard core collusion

Professor Allan Fels AO, Chairman, ACCC

9.30 am — 10 am

The application and effectiveness of criminal sanctions in US antitrust law

Jim Griffin, Department of Justice, USA

10 am — 10.30 am

The path to criminal reform of competition law:

Experience of the UK Office of Fair Trading

Adrian Walker Smith, Office of Fair Trading, UK

10.30 am — 11 am Questions and discussion

11 am — 11.30 am Morning tea

11.30 am — 12.10 pm

Practitioners' perspectives on ACCC reform proposals

Panel — *Damien Bugg QC, Director of Public Prosecutions*

Peter Armitage, Law Council of Australia

Bret Walker SC, NSW Bar Association

Michael Potter, Council of Small Business

Organisations of Australia

12.10 pm — 12.30 pm Questions and discussion

12.30 pm — 12.40 pm Conference closes

12.40 pm — 2 pm Lunch

This program is subject to change without notice.

Country of origin guide for textiles, clothing and footwear industries

The Commission has published a guide for the textiles, clothing and footwear industries to help them comply with the country of origin guidelines within the Trade Practices Act.

Acting Commission Chairman, Mr Rod Shogren, said:

Consumers will often make a purchase decision based on the country of origin of a product, especially Australian made products. They may even be prepared to pay a premium for Australian products.

The ACCC has litigated in the past for false country of origin claims and will do so again if necessary. This guide will help those who wish to make the claim to do so correctly.

In developing this publication the ACCC led a TCF [textile, clothing and footwear] working party which included representatives from The Council of Textile and Fashion Industries of Australia Limited, and the Business Law and Competition Reform Section of the Department of Industry, Science and Resources.

Under the Act, companies do not have to state where goods are from, but if they do then the claims must be accurate.

The two components of the 'Made in Australia' 'safe harbour' are:

- the goods must have been substantially transformed in the country claimed to be the origin
- 50 per cent or more of the costs of production must have been carried out in that country.

Two rigorous criteria which must be met are:

- the country of the claim must be the country of origin of each significant component of the goods
- all, or virtually all, processes involved in the production or manufacture must have happened in that country.

The TCF guide is the second of a series of six Commission publications designed to assist industries ensure they comply with the Act's country of origin rules.

Textile, clothing and footwear industries—country of origin guidelines to the Trade Practices Act can be found on the ACCC website at <<http://www.accc.gov.au>> or a hard copy obtained free from the ACCC Publishing Unit on (02) 6243 1143.

Commission proposes release of regulatory accounting information

The Commission has released a discussion paper on the public disclosure of information collected via the telecommunications record-keeping rules. It is seeking comments from the industry.

The record-keeping rules allow the Commission to improve the integrity and transparency of the information provided to it by carriers. These rules have been used to develop a regulatory accounting framework under which carriers Telstra, Optus, Vodafone, AAPT and Primus report on a regular basis. Record-keeping rules are also used for specific functions such as the monitoring of the roll-out of ADSL services by Telstra and access seekers.

Commission Chairman, Professor Allan Fels, said:

The ACCC sees the disclosure of record-keeping rule information as potentially reducing the information asymmetry between an access provider (commonly Telstra) and access seekers.

Professor Fels noted that one of the main impediments to successful access negotiations over Telstra's fixed-line network has been the lack of transparency of Telstra's costs. He further commented that:

The discussion paper flags the ACCC's preliminary view that some of Telstra's cost data related to its local loop should be released on a regular basis. This should reduce the amount of industry disputation.

This is part of a wider process to develop a more comprehensive framework for the ACCC's collection and disclosure of information across the range of its telecommunications regulatory functions.

The legislation requires the Commission to take account of a carrier's legitimate commercial interests in not having the information disclosed.

Professor Fels said:

The ACCC will be careful to ensure that carriers' interests are considered before any information is released.

The Commission has called for comments by 22 February 2002. Depending on submissions, the Commission may be able to start reporting from late 2002. The discussion paper will be available on the ACCC website at <<http://www.accc.gov.au>>.

Small business publications

The Commission encourages small businesses to think of the Trade Practices Act as an important management tool, and compliance with the Act as part of good business practice that leads to success and profitability.

Knowing their rights and obligations under the Act will help small businesses to be professional in the way they deal with other businesses and to avoid problems.

The Act helps as far as possible to create an environment of certainty for small business. It aims to prevent any business, large or small, from gaining an unfair advantage over its competitors by engaging in any misleading or anti-competitive behaviour.

The Commission has re-issued its free publication *Small business and the Trade Practices Act* which is a practical guide for Australian small business owners, managers and advisers. The guide discusses how small business should take the Act into account in dealing with suppliers, competitors and customers.

Small business and the Trade Practices Act has a strong focus on the small business owner with sections on 'You and your suppliers', 'You and your competitors', and 'You and your customers'. Readers can easily understand common scenarios and are given examples on how to deal with each situation.

The guide offers practical advice on how to avoid trade practices problems facing small business owners and how to avoid disputes. It also explains the approach the Commission takes in dealing with complaints received from the public and small business.

Over the years there has been a significant strengthening of the unconscionable conduct provisions of the Act to recognise the special needs of small businesses. The Commission has increased its focus on providing information and support to small businesses including a major new program in regional and rural areas.

In addition to regional outreach officers and small business managers in all states and territories the Commission has now established the ACCC Infocentre which provides small business with advice on the provisions of the Act, and its application to small business.

Small business and the Trade Practices Act is part of a suite of publications for the small business owner. Another recent addition to this suite is *ACCC Briefing*.

This regular newsletter provides a concise summary of recent media releases of interest to small business. It includes information from all areas of the Commission's activities, including mergers, authorisations and regulated services. It also includes an update from the small business commissioner and the small business managers in each state and territory.

For more information call the ACCC Infocentre on 1300 302 502, or visit the ACCC's website publications page at <<http://www.accc.gov.au>>.

Storecharter

Storecharter is a voluntary charter developed and published by the Commission. Stores that have agreed to cooperate with its principles and have indicated this to the Commission 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).

Storecharter's purpose is to:

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

Related to the Commission's *Storecharter* initiative is ASIC's recent report, *Book up*, on informal credit given by traders to consumers so that consumers can purchase goods or services from the trader. It is available from the ASIC website at <<http://www.fido.asic.gov.au>>.

As described in more detail in *Storecharter* and the ASIC report book up (or book down) is an informal credit given by traders such as stores, taxi drivers, hawkers and regional airlines.