

GREEN CLAIMS AND THE TRADE PRACTICES ACT

Introduction

As consumers are becoming more and more environmentally conscious, environmental claims are becoming an increasingly powerful marketing tool. However, 'green' claims must be effective and must comply with the relevant law.

The Law

Any business which makes a 'green' claim in relation to a product or service must ensure that its claims are accurate and scientifically substantiated. A failure to do so may result in a breach of the law, in particular, the *Trade Practices Act 1974 (Act)*.

The Act, as it stands, contains the broad prohibition on misleading and deceptive conduct. Accordingly, a business has an obligation not to engage in any conduct that is likely to mislead or deceive consumers in any way. A finding of misleading and/or deceptive conduct carries serious penalties for the business engaging in the conduct.

Conduct by a business may be considered to mislead or deceive consumers if there is a 'real or not remote possibility, that members of its target audience have been misled'. It does not take all the members of the class of the audience that the conduct is targeted at to be affected for there to be a finding of misleading and/ or deceptive conduct and therefore a contravention of the Act.

ACCC Guide

In early 2008, the Australian Competition and Consumer Commission (**ACCC**) released a guide to assist companies in achieving "green compliance".

A copy of the guide can be found at www.accc.gov.au/greenmarketing.

ACCC investigates

In light of a growing number of complaints from consumers, the ACCC has increased significantly the number of investigations and actions it has undertaken on companies in relation to 'green' claims.

This serves as a warning to all that when a business makes 'green' claims, it must ensure each claim is accurate and can be substantiated if challenged.

Recent Case

The ACCC recently commenced proceedings against GM Holden Limited, alleging that it had engaged in false, misleading or deceptive conduct in respect of a number of 'green' claims made in the promotion of one of its vehicles.

The ACCC was concerned that certain statements made as part of the marketing campaign suggested that the particular model of vehicle in question would release close to zero carbon emissions.

This was found to be an unsubstantiated claim and the ACCC is in the process of reviewing GM Holden Limited's Trade Practices compliance program. If GM Holden Limited is found to be in breach of the Act, it may face serious penalties.

Summary

Kreisson Legal is able to assist and provide advice to those seeking to use the marketing power of 'green' claims whilst remaining compliant with the relevant law and avoid investigation by the ACCC.

If you would like any further information on this topic, please contact [Ishita Sethi, Solicitor](mailto:Ishita.Sethi@kreissonlegal.com.au) on 9230 6514 or ishita.seithi@kreissonlegal.com.au



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