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BE CAREFUL WHEN ADVERTISING!

Last month a decision was handed down in the Federal Court signalling another reminder to businesses to make sure their advertising is not confusing or misleading to consumers.

The decision of Cadbury Schweppes Pty Ltd v Darrell Lea Chocolate Shops Pty Ltd (No 4) [2006] FCA 446 dealt with allegations of false and misleading conduct under section 52 of the Trade Practices Act (Cth) 1974.

Cadbury Schweppes (Cadbury) alleged that Darrell Lea's use of a shade of the colour purple led consumers to believe that there was a connection with Cadbury, as Cadbury claimed it had a reputation for that particular shade of purple.

The Court decided that colour does play an important part in product recognition by consumers, but that logos and brand recognition are equally as important.

Although the case was decided against Cadbury, as no breach was found by Darrell Lea, it does highlight the sensitivities of walking a fine line when using similar colours or logos in regards to products and even services.

Businesses need to be aware that even if there was no intention to mislead or confuse consumers by using a particular logo or catch phrase, for example, your business still may have committed an offence under the Trade Practices Act (Cth) 1974.

Consumers often buy on impulse, leaving little time to compare products or brands in great detail. Therefore, consumers can be easily confused or misled and care needs to be taken as a result.

Here are some handy tips for businesses and their marketing departments when creating advertising material:

Ask yourself the following questions:

1. Have you created something which is new, unique or different?
2. Is the wording of any catch-phrase or jingle clear and true?
3. What message do you want to give consumers?
4. Do you think consumers will understand the message the same way?
5. Has your marketing material received legal approval?

If your new logo, catch-phrase or jingle, and its combined colour scheme, have a unique feature, then consideration should be given to lodging an application for trademark protection.

You should also protect any of your current logos, catch-phrases or jingles by monitoring any similar use by others businesses.

Logos, catch phrases or jingles and other clever marketing initiatives can produce great results for businesses and strong brand recognition by consumers.

If you require any further information in relation to this topic, please contact Ilona Teremi, Partner on (02) 9375 2258 or email ilona.teremi@kreissonlegal.com.au



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