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Commercial Law e-alert

“Naming and shaming” First public warning notice issued by ACCC

The national competition regulator, the ACCC, has begun to flex its muscles and for the first time has exercised its new power to “name and shame” businesses which it suspects have misled the public and pose a real threat to unsuspecting consumers.

In this case, three companies placed advertisements in different newspapers offering a business for sale. The advertisements all related to a parcel delivery business which involved the delivery of “Heartlink” branded products to supermarkets. The companies claimed in the advertisements that potential business owners could earn between \$900 and \$1,200 per week for part-time work, in return for an initial investment of between \$10,000 and \$30,000. In practice, none of the purchasers achieved the claimed earnings and in fact, most of the purchasers received no income.

In response, the ACCC issued a “public warning notice” last Friday in respect of all three companies, warning the public that the advertisements are misleading and cautioning against any purchasers investing in the advertised businesses. The ACCC was satisfied that the three relevant criteria for issuing a public warning notice had been met, namely: (1) there were reasonable grounds to suspect that the conduct of the three companies was in breach of the Trade Practices Act; (2) it was satisfied that at least one person has or would suffer detriment as a result; and (3) it was satisfied that the issuing of the notice was in the public interest.

The ACCC’s power to issue a public warning notice was introduced as part of the first phase of the new Australian Consumer Law reforms which took effect in April 2010 and provided the ACCC with greater enforcement powers to ensure compliance by businesses with consumer legislation.

The ACCC has also been granted the power to issue:

- “infringement notices”, where the ACCC fines a person or company who has allegedly breached certain provisions of the Trade Practices Act including by engaging in unconscionable conduct or pyramid selling; and
- “substantiation notices”, which require businesses to provide evidence to support promotional claims regarding their goods or services.

This is the first case to be placed on the ACCC’s public register for warning notices. There is also a public register for infringement notices but the ACCC has yet to exercise its power to issue such a notice. The ACCC did not issue a substantiation notice prior to issuing the public warning notice in this case.

As mentioned, these changes form part of the Australian Consumer Law reforms, which are intended to establish a uniform national consumer protection system. Those reforms are summarised in our earlier alerts available [here](#).

The second wave of reforms will take effect on 1 January 2011, including new statutory consumer guarantees to replace the existing implied conditions and warranties regime.

We will keep you advised on the effect of the changes. If you have questions about the impact of the Australian Consumer Law on your business, please contact:

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