

IP, Advertising & Technology Alert September 2008

Saab's Green Ads Declared Misleading

In [May](#), we reported on the ACCC's action against GM Holden Ltd, trading as Saab Australia concerning their "Grrrrreen" advertising. That action has now been settled, with the Federal Court declaring, by consent, that Saab Australia engaged in conduct likely to mislead or deceive and made false representations in breach of the *Trade Practices Act, 1974 (Act)*.

Background

Between July and September 2007, Saab Australia published advertisements in newspapers, magazines and on its website promoting a range of Saab motor vehicles. The Saab ads had the headline statement "Grrrrreen" and stated:

- > "Every Saab is Green. With carbon emissions neutral across the entire Saab range" (**Carbon Neutral Statement**); and
- > "Saab will plant 17 native trees on your behalf in the first year as a carbon offset" (**Tree Statement**).

The ACCC alleged that the Saab ads were misleading or deceptive because:

- > the carbon dioxide emissions from the Saab vehicles would not be neutral over the life of each vehicle; and
- > the planting of 17 native trees would not provide a carbon dioxide offset for more than a year's operation of any of the Saab vehicles.

The ACCC contacted Saab Australia to raise its concerns about the misleading nature of the Saab ads. Saab Australia responded by stating that they had stopped publishing the Saab ads and would not republish them. This did not satisfy the

ACCC. They invited Saab Australia to offer the ACCC court enforceable undertakings under Section 87B of the Act in respect of its conduct. When the company did not do so, the ACCC commenced Federal Court action under Sections 52 and 53(c) of the Act.

Section 52 prohibits conduct which is misleading or deceptive or likely to mislead or deceive and section 53(c) prohibits representations that goods or services have, among other things, performance characteristics or benefits they do not have.

Outcome

Saab Australia settled the Court action by giving the ACCC a Section 87B undertaking. It included the undertakings that Saab Australia would:

- > refrain from re-publishing the Saab ads;
- > train all Saab marketing staff in relation to misleading or deceptive conduct in the context of "green" marketing claims to ensure that they are aware of their responsibilities and obligations under Section 52 and 53 of the Act; and
- > arrange for an independent third party to include this training in GMH's annual review of its Trade Practices Compliance Programme.



The Court declared, by consent, that by publishing the Saab Ads containing the Carbon Neutral Statement and the Tree Statement, Saab Australia had breached sections 52 and 53(c) of the Act.

The Court ordered the company to pay the ACCC's costs and Saab Australia also initiated, of its own accord, to plant an additional 12,500 native trees.

Implications

This case illustrates the importance of having evidence to substantiate all advertising claims, including green claims. If you do not have the evidence, you risk running foul of the Act. If the claims are green claims, the risk is arguably

higher given the level of public interest in environmentally friendly products and the focus of the ACCC on 'greenwashing'.

ACCC Chairman Graeme Samuel commented that "*companies risk breaching the Trade Practices Act if they give an overall impression to consumers that their product is environmentally friendly when it isn't.*" He also warned that "*the ACCC will continue to be vigilant on 'greenwashing' and will not hesitate to take enforcement action against traders who make false or misleading representations to consumers, as has been demonstrated by this case.*"

The ACCC has issued some useful guidelines for business on green marketing and related issues.

These are "Green Marketing and the Trade Practices Act" and "Carbon Claims and the Trade Practices Act" which are available on the website www.accc.gov.au.

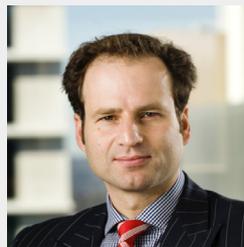
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