



## Trade Practices Alert February 2008

### Old Scams In New Clothing!

#### **The Trade Practices Act and Carbon Offset Claims**

The Australian Competition and Consumer Commission (ACCC) is seeking submissions from interested parties including consumer groups, accreditation agencies, offset providers and corporate participants in carbon offsets schemes by **15 February 2008** regarding the issues paper *The Trade Practices Act and carbon offset claims*.

Concerns from consumers about understanding and verifying carbon offset claims made by organisations has prompted the ACCC to publish an issues paper and seek submissions from interested parties. Not only is the issues paper timely but it provides an opportunity for all businesses to examine their own claims and those of their competitors.

Generally, wherever there are emerging technologies and consumer interest, there are unfortunately people who will seek to take advantage of these developments. Examples of such scams are early mobile phone scams, false organic food claims and low interest home loans where the interest rate is only low for short period of time.

In this emerging area, we have deep consumer concern coupled with considerable confusion. Increasingly consumers want to do the right thing. They are prepared to pay more for carbon neutral products and even to voluntarily pay money to offset the creation of carbon dioxide by their own activities such as flying.

But are they getting anything for the increased money they are paying or for the voluntary payments they are making?

The Trade Practices Act (TPA) has a number of provisions that are relevant and may be used by individuals or the ACCC. These include:

- > *Is the conduct misleading or deceptive? In making a claim as to future benefits did the business have reasonable grounds for making such claims?*
- > *Do the claims falsely represent that the product or service has “benefits they do not have”?*
- > *And who is to say whether a claim is correct or not? Were those trees planted because you paid that money to offset your trip to Bali. Who does the calculations of carbon emissions? Does anyone certify that they are accurate?*
- > *Is your competitor making claims that you know cannot be substantiated?*
- > *Is the fine print sufficient to overcome the main message of the communication?*

It is interesting to note that in the current Productivity Commission inquiry into consumer protection, there is discussion on the need for the ACCC to be able to issue a substantiation notice – perhaps claims in this area are just the type of claims the Productivity Commission has in mind.



Details of the ACCC issues paper may be found at <http://www.accc.gov.au/content/index.phtml/itemId/808823/fromItemId/142>

In addition to ACCC, the Government is also looking closely at these issues. See <http://www.greenhouse.gov.au/greenhousefriendly/> for further information.

On 11 February 2008, the ACCC issued guidelines - "Green Marketing and the TPA" which includes a "Checklist for Marketers" which may provide some guidance for those wanting to make carbon neutral claims. These guidelines can be found at <http://www.accc.gov.au/content/index.phtml/itemId/810157>

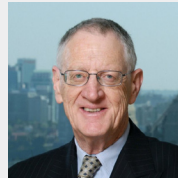
**Submissions are required to be made by 15 February 2008.**

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