



One of the ACCC's most important roles is consumer protection and one of the ways it does this is by enforcing the Trade Practices Act. In the health sector this has meant taking court action against unscrupulous traders who make false or misleading claims about products, and profit from the desire of vulnerable people to change their appearance or improve their wellbeing in some way.

As is almost always the case if something sounds too good to be true, it usually is. But this doesn't stop people falling for claims that a product can miraculously improve their appearance, especially in the area of weight loss or body shaping.

Below are some of the cases the ACCC has taken in its effort to ensure that companies don't get away with false or misleading advertising.

## PROTECTING CONSUMERS

### The Abtronic

In May 2002 the ACCC started court proceedings against the promoters of a health and fitness industry product, the Abtronic.

The ACCC alleges that Danoz Direct Pty Ltd, sole director Mr Moshe Ozana and other individuals, engaged in misleading and deceptive conduct or were knowingly concerned in the conduct while promoting the Abtronic as a muscle stimulating machine. The Abtronic was promoted on Channel 10's *Good Morning Australia* and *Bright Ideas* programs, during infomercials on Channels 10 and 7, in a Danoz product catalogue and on the company's website.

The ACCC has sought orders granting permanent injunctions against Danoz Direct Pty Ltd for various breaches of the Trade Practices Act. In particular, the ACCC is seeking to prevent Danoz from representing that the Abtronic has the following, or similar, performance characteristics, uses or benefits:

- that it is a brilliant training and toning tool
- that it can be used to work out and tone different muscle groups

- that it provides a vigorous workout for the abdominal region, the 'love handles', arms, buttocks, thighs
- that it can flatten your stomach 'once and for all'
- that you just sit and relax and watch your abs tighten, your 'love handles' disappear and your thighs and bottom firm up—with no sweating involved
- that you can get the results of up to 600 sit-ups in just 10 minutes without any effort.

Danoz is defending the matter and the trial is set down for 19 March 2003.

### The Feminique

The ACCC was involved in a similar case to the one above in 2001—this time against The Buyers Group. The case involved the Feminique muscle stimulation device promoted in infomercials on Channel 10's *Good Morning Australia* and *Bright Ideas* programs, Channel 7's *Morning Shift*, and the company's website.

On 10 August 2001 the Federal Court in Brisbane imposed interlocutory injunctions, by consent,

restraining The Buyers Group, Josephus Schoonenberg (sole director) and employees Marianne Schoonenberg and David Simons from representing that the Feminique or any other muscle stimulation product can:

- exercise, tone, firm or pull back into shape any part of the user's body without effort by the user
- burn up fat
- flatten the user's stomach without any effort by the user
- result in the user losing 3 kilograms in weight and reduce the user's waist measurements by 3 centimetres in 4 weeks
- is ideal for people who want to see effective and immediate results.

### Purple Harmony Plates

In August 2001 the Federal Court in Melbourne found Purple Harmony Plates had published misleading health claims on its website about pieces of anodised aluminium plate.

The ACCC had alleged, and the court ruled, that Purple Harmony Plates Pty





Ltd, based in Melbourne, had made unsubstantiated claims about the future benefits for its products, which were made of anodised aluminium in various shapes, sizes and colours.

The claims included that the plates:

- protected against electromagnetic radiation from computers, televisions, mobile telephones etc.
- energised water and freed it from odour and chlorine
- lowered body stress and fatigue levels
- grouped together heavy metals and other impurities (in water) into larger molecules so that they could not be absorbed by the body
- helped strengthen the immune system
- increased general health
- accelerated healing
- reduced less severe aches and pains or niggly coughs and colds
- improved plant growth
- ionised car fuel to allow a more complete fuel burn.

The court ordered injunctions, refunds, and the company to send corrective statements in writing to customers and place them on its website. When Purple Harmony failed to comply with the court's orders the ACCC began contempt proceedings and on 9 April 2002 the court imposed fines of \$20 000 on the company and \$10 000 each on Helen Therese Glover and Neal Arthur Lyster (its directors) for contempt.

The matter was back in court on 24 October 2002 following the company's continued failure to comply with the court's orders and not paying the fines. On 2 December 2002 the judge handed down his decision, again finding Lyster and Glover guilty of contempt. He issued warrants of committal for one month prison terms suspended on condition they comply with orders including transferring the domain name <www.purple-plates.com> to the ACCC for the purpose of placing a consumer notice on the site.

### Giraffe World

This case, which began in 1998 in the Federal Court in Sydney, involved a product called a 'negative ion' mat which Giraffe World Pty Ltd claimed alleviated the suffering of people with ailments including arthritis, asthma, heart problems, insomnia and stress.

In April 1999 Giraffe World gave an undertaking to the court that until the judge gave his judgment it would not represent that the 'negative ion' mat produced negative ions, relieved ailments or promoted health. However, in June 1999 the court found that the company was guilty of contempt of court by making those claims.

On 26 August 1999 the court found that Giraffe World (which was by then in liquidation) had engaged in misleading or deceptive conduct and promoted a referral and pyramid selling scheme. The court found that Akihiko Misuma, founder and director of Giraffe World, and Robin Han, its president and chief executive officer until November 1998, were knowingly concerned in, and a party to, Giraffe World's pyramid and referral selling contraventions.

The liquidator has commenced Supreme Court proceedings against the chairman of Giraffe World to recover funds for distribution to creditors. If successful, the liquidator intends to seek judicial advice over admitting claims by members of Giraffe World in respect of commission payments for recruiting new members to the company.

The ACCC will be seeking leave to appear and make submissions in those proceedings that members' claims for unpaid commission income from an illegal pyramid selling scheme should not be admitted, but that claims for refunds for the negative ion mat that did not perform as represented should be admitted.



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