

The risk is all in the label ...

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In this age of unprecedented globalisation, the Australian market is teeming with products claiming to have originated from all corners of the world, including Australia.

The *Trade Practices Act 1974* (TPA) regulates representations including those relating to the country of origin of goods. It does so in Pts V, VC and VI in the interests of consumer protection and contains core contraventions which give rise to both civil and criminal actions.

For importers, manufacturers and retailers, ensuring that representations in promotional material and on labels can be substantiated before being released to the market is prudent risk management and should never be based on 'guesswork' or whim — nor subservient to marketing strategy.

Onus

Allegations of breach may be made by an aggrieved consumer or a vigilant competitor, particularly in a niche market. The onus of proof that the product's claims meet the defences set out in the TPA is on the person defending the claims against allegations of breach.

Test for country of origin

If a representation is made about a product's country of origin and it can be claimed that the product was substantially transformed in the country in question, or 50 per cent or more of the cost of producing or manufacturing the goods took place in that country, the defence is likely to be upheld, particularly if the company can provide credible evidence substantiating the claim. Such evidence may be in the form of documents which verify origins of the product, its components or ingredients, and locations of production, assembling or manufacturing processes.

Qualifying a claim

The regulating authority, the Australian Competition and Consumer Commission (ACCC), has adopted the view that qualified claims do not have to meet the substantial transformation or 50 per cent content tests.

Examples of qualified claims for country of origin could include 'Made in Australia from fabric woven in India' or 'Assembled in Australia from 60 per cent Australian and 40 per cent German parts'. Factually qualifying claims in this way can reduce the likelihood of ambiguity and consumers being misled.

Timing of qualifications can also be critical. Ideally, they must be made simultaneously and with the same prominence as the representation they seek to qualify. Omissions or misleading impressions are hard to correct later, despite qualifications or well-drafted disclaimers. Courts invariably focus on the overall impression conveyed by the representation.

Symbols

Graphic representations such as national flags, icons, symbols or animals may be effectively used to create the impression that a product comes from a particular country. A garment may be made in China but the Italian flag and its colours may feature prominently in its merchandising and labelling. Potential legal exposure is invited if such a symbol suggests that the good's origin is Italian when it is not the case.

Minimising the risk

An investigation by the regulator or a future court action may begin with a telephone call which is ignored or mishandled. An effective compliance program with continuous staff training, in-built managerial accountability mechanisms and customer complaint handling procedures will assist to reduce TPA breaches in relation to problematical advertisements or labels. The courts also regard such a program favourably.

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