

## update

11 July 2008

## Friday Facts: Sellers beware

*The recent case of Australian Competition and Consumer Commission (“ACCC”) v Nudie Foods Australia Pty Ltd (“Nudie”) in the Federal Court of Australia has highlighted the importance of manufacturers of consumer products ensuring that they do not mislead or deceive consumers with representations made about their products.*

The ACCC commenced proceedings against Nudie in relation to its packaging and promotion of two of its fruit juice products, “Rosie Ruby” and “Rosie Blue” for being in breach of the consumer protection provisions of the *Trade Practices Act 1975* (the “Act”).

Between July 2007 and 30 January 2008, the products were supplied to retailers through supermarket chains and shops and were promoted by advertising campaigns using signboards on buses and trains, street posters and postcard flyers.

The “Rosie Ruby” bottle depicted the words “cranberry cloudy juice”, had a picture of a cranberry on the bottle, and the colour of the juice was the same colour as the fruit pictured on the label. Similar descriptions were on the “Rosie Blue” bottle which was described as “cranberry blueberry juice”.

The promotional material depicted the words “cranberry cloudy juice” and “cranberry blueberry juice” and the statement “NOTHING ADDED, NOTHING GAINED (PHEW)” in conjunction with “Chilled cranberry juice with no added sugar. And no guilt”.

Nudie conceded that by reason of the above promotion, marketing and sale of these products Nudie represented to customers that:

1. Rosie Ruby consisted solely of cranberry juice; and
2. Rosie Blue consisted solely of cranberry and blueberry juice (collectively the “representations”).

Nudie admitted that the products were comprised of mostly apple juice with significantly less proportions of cranberry and blueberry juice and consented to orders being made by the Federal Court against it that by making the representations it had engaged in conduct that was liable to mislead and deceive members of the public who purchased the juice in contravention of section 52 and section 55 of the Act.

An injunction was ordered restraining Nudie from repeating the conduct. Nudie was also ordered to publish corrective advertisements on its website, send corrective statements to each retailer to whom it supplied the product to and establish an education training and trade practices compliance program designed to minimise risks of future breaches of the Act.

Although Nudie co-operated with the ACCC and avoided any penalties (within the power of the ACCC), the company still bears the financial burden of the rectification process and the damage to its reputation in the marketplace.

This case highlights the need for companies to ensure that its consumer products comply with the Act, and that any representations made do not, or are not likely, to mislead or deceive consumers. It also highlights the importance of having systems in place to review product labels and advertising proofs for compliance with the Act and ensuring that representations made are correct and reliable before they enter the market place.

## For more information

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