

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 1516-1519

Topic: Misleading brands (ACCC)

Written: Received 6 February 2014

Senator XENOPHON asked:

I would like to ask questions in regards to issues brought to my attention by the Australian Sheepskin Association (ASA). I have also written to the ACCC on this matter who responded recently.

The ASA has told me that many imported ugg boots have been presented on shop shelves without displaying their country of origin. While imported footwear is required to be marked with country of origin when arriving in the country, once it has been passed by Customs, there are no longer any controls. This allows importers to remove country of origin labels before sale.

1516. Given the labelling requirement is administered by Customs, but can risk misleading consumers about the origin of goods, will the ACCC consult with Customs on this matter?

Furthermore, I am concerned about misleading 'Australianised' brand names in the industry. As mentioned in my correspondence, Intellectual Property Australia has approved names such as 'UGG Australia', owned Deckers Outdoor Corporation of California.

1517. In your letter to me on this issue, you have stated that the ACCC will be assessing the details of my correspondence regarding UGG Australia. Can you advise me of the process for assessing these matters?

1518. Can you advise of potential enforcement action that could take place?

1519. Does the ACCC consult with Intellectual Property Australia to stop approval of such names in the first place?

Answer:

1516. The ACCC will consult with the Australian Customs Service where it considers that consultation will assist the ACCC in its compliance and enforcement activities.

1517. Most of the matters that the ACCC investigates under Part IV of the *Competition and Consumer Act* (CCA) are initiated by a pattern of enquiries and complaints received from the public about traders. In some cases the ACCC will proactively initiate investigations if it identifies an issue of concern, regardless of the number of contacts it has received on that issue.

The decision to escalate and investigate a matter is made through a considered process and by various Commission specialist committees as appropriate.

If a person who contacts the ACCC's Infocentre raises a concern or complaint about a trader's conduct which could amount to a breach of the CCA the matter is considered via a 'triage' process in accordance with the ACCC's Compliance and Enforcement Policy i.e. a process of assessing priority for investigation.

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If the conduct is initially assessed by the ACCC Infocentre as falling within the CCA, it is then considered at a weekly meeting of ACCC officers and senior management who assess the allegation against the priority criteria set out in the Compliance and Enforcement Policy.

If it is decided that a matter requires further investigation, the matter is referred to an investigation team for their review and initial consideration. If the investigation team considers the matter should be escalated to an 'in-depth investigation', the matter is referred to the ACCC's Enforcement Committee, which comprises the ACCC's Chairperson and a number of Commissioners.

The Enforcement Committee meets once a week to consider compliance and enforcement matters and the recommendations made by the ACCC's staff in relation to those matters. If the Enforcement Committee directs that the investigation should be continued, staff then investigate the matter in accordance with the Australian Government Investigation Standards and ACCC procedures. For a matter to proceed to litigation in the courts, the Enforcement Committee will refer the matter for the consideration and decision of the Commission.

1518. Potential enforcement action by the ACCC includes:

- administrative resolutions
- infringement notices which can be issued where the ACCC has reasonable grounds to believe that a person has contravened certain provisions of the Australian Consumer Law (but not section 18 which prohibits misleading or deceptive conduct in trade or commerce)
- court enforceable undertakings accepted under section 87B of the CCA
- court action where the ACCC can seek remedies including corrective notices, non-punitive orders such as community service or probation orders and pecuniary penalties.

The ACCC also utilises compliance activities to address consumer protection concerns and encourage trader compliance with the CCA. The ACCC makes comprehensive use of educational campaigns to provide information and advice to consumers and businesses, and to use persuasion to encourage compliance with the CCA.

1519. On occasion concerns may arise under the Australian Consumer Law in relation to trading names and registered trademarks. Both the ACCC enforcement of the CCA and the Intellectual Property regime administered by IP Australia allow consideration to be given as to whether there is the potential for a name to mislead.