

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 85

Topic: King Island Brand Management Group

Hansard Page: E112 (02/06/2010)

Senator ABETZ asked:

Senator ABETZ—Or rabbits, yes. But I will not take that point any further. Has your attention been drawn to the King Island *Courier* front page article of 19 May 2010 in which the King Island brand management group say they are struggling with ACCC ambiguity? From the article it seems as though you have been engaging with the group and providing information, if I might say, to the King Island *Courier* as well. You are responding to them. In the question, I want to compliment you for doing that because it would be very easy to try to ignore a relatively small and regional community and paper, so good on you for engaging with them. But that article did refer to ACCC ambiguities. Have you tried to assist the group to understand those ambiguities and get over those ambiguities? Have you confirmed that there are ambiguities in the laws that you have to administer that occasion some difficulty for you?

Mr Cassidy—Senator, I do not know which part of the question to take first. I think the ambiguities are probably the sorts of things I was just referring to about not having bright lines, if you like, around exactly what constitutes ‘produced on King Island’. We have been dealing with local people and entities on King Island in relation to the issue. I must confess that I am not aware of that particular article in the King Island *Courier*. But what we will do, if you can give us the article, is take the question on notice and perhaps give you a bit more detail about what is said in the article.

** article provided via Committee Secretariat.*

Answer:

The King Island Courier Article

The King Island *Courier* article of 19 May 2010 with the by-line *Sun logo threatens KI brand (the 19 May Article)* raises various issues of concern to the King Island Brand Management Group (KIBMG). The 19 May Article focuses on four competing trade marks currently used in the marketplace to promote King Island beef product.

In the 19 May Article the KIBMG claim to have received negative feedback about two of the trade marks. KIBMG state that the negative feedback derives from the product, on which the trade mark is used, not being processed on King Island and that the product is having ‘an affect on consumers and the valuable reputation of our [King

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Island] beef'. KIBMG contend that it is the processing of beef on King Island that gives credibility to the King Island brand generally and the trade marks specifically.

The 'ambiguities': *country of origin* versus *geographic origin*

The ambiguities to which the 19 May Article refers may relate to how an allegation of misleading and deceptive conduct for a **country of origin** claim is considered under the *Trade Practices Act 1974* (TPA) as distinct from how an allegation of misleading and deceptive conduct in relation to a **geographic region** representation is considered under the TPA. The distinction arises when the Country of Origin Representation provisions under the TPA are applied.

The TPA prohibits misleading and deceptive conduct, and provides a set of safe harbour provisions, or defences, against misleading and deceptive or false representation allegations, for claims of 'Made in Australia' or 'Product of Australia' which meet certain tests. However, the same safe harbour defence provisions do not extend to allegations of misleading and deceptive representations concerning place of origin unless the place is a country.

A claim that a good has its origins in King Island, or has a history or an association with King Island, would be a claim relative to a good's geographic region. Unlike for claims of country of origin, the TPA does not provide a set of defences or safe harbours for businesses making a claim with respect to the geographic region of a good.

Under the TPA it is not mandatory for a business to state where goods are from, but if they do, the claim must be truthful. A business must ensure that geographic region representations that imply goods are of a particular standard, quality, value, grade, composition, style, or have had a particular history or origin, are accurate. Further, a business must not represent that a good has sponsorship, approval, or benefits it does not. A misleading, deceptive, or otherwise false claim will likely breach the TPA.

Words or images, that a good has its origins with a particular geographic region, as evident in the various King Island beef trade marks, would be assessed as to the overall impression created in the mind of the consumer. In the context of the products in question, while the existing King Island trade marks create the impression that the product has its origin on King Island, or are 'produce of King Island', the King Island trade marks may not create the impression that the product has been processed on King Island. This view has previously been discussed with and advised to the KIBMG. Ultimately however, these would be matters for a court to consider having regard for all the relevant circumstances.

The ACCC will continue to carefully consider all complaints it receives from consumers and other parties, such as the KIBMG, about the accuracy of representations as to the history or origin of goods including words and images of

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King Island. The ACCC will also continue to liaise direct with the KIBMG through its Hobart regional office.