
International developments

From the UK

The following items come from the Office of Fair Trading's website <<http://www.oft.gov.uk>> and its magazine, *Fairtrading*.

Complain, comply or confess

The Office of Fair Trading called on small businesses to complain, comply or confess as the OFT stepped up its fight against cartels.

The competition authority has the power to fine cartel members up to 10 per cent of their UK turnover under the Competition Act and sees small businesses as particularly vulnerable. Some may also be unknowingly breaking the law by agreeing with other businesses not to compete against each other.

The OFT launched a campaign urging firms to complain if they suspect local companies are operating a cartel, to comply with the Competition Act to avoid penalties and confess if they are part of a cartel. National press and radio advertising are used as part of the campaign to reinforce the importance of the information. Accountants will also be sent information about cartels for their clients.

Energy companies warned about mis-selling

The consumer watchdog is increasingly concerned about the methods used by a number of energy companies selling their services. These include mis-selling and pressurising people into entering contracts they had little time to read.

A written warning was sent to all gas and electricity companies in England, Scotland and Wales to inform them of a new law that covers telesales. The new legislation on distance selling ensures that people now have a cooling-off

period to cancel any contract and are also entitled to written confirmation of information provided by the company during the telephone call. The identity of the caller and the purpose of the call must also be disclosed at the outset.

The OFT is concerned about stories from consumer groups that consumers enter new contracts over the phone without realising it and without even knowing the identity of the new supplier.

The OFT will follow this warning to energy suppliers with action against companies shown to be mis-selling. The distance selling regulations add a valuable new tool to the OFT's powers to deal with mis-selling.

New guidelines for credit industry

The OFT issued guidance on standards of behaviour expected of consumer-credit licence holders. The guidelines are clear on what would be likely causes for refusal or removal of licences — dishonesty, discrimination, the use of oppressive sales techniques and failing to offer consumer redress.

John Vickers, Director General of Fair Trading, said that ensuring that credit providers are fit to hold their licences is vital for borrowers and a key part of the OFT's work. The OFT plans to add to these general guidelines with specific guidance for business sectors that attract high levels of complaint, such as debt collection, credit broking, used cars and home improvements.

From the US

The following items come from the Federal Trade Commission's press releases on its website <<http://www.ftc.gov>> and from *Antitrust & Trade Regulation*, published by the Bureau of National Affairs, Inc.

Misleading 'Made in USA' claims

A Montana-based manufacturer of power tool accessories, Jore Corporation, has agreed to settle Federal Trade Commission charges that it had misused the 'Made in USA' claims on its products.

According to the FTC's complaint, packaging for certain Jore Corporation products contained such representations as 'Made in USA', and 'Made in USA with Domestic and Global components', which imply that all or virtually all of the component parts of the products are made in the United States. It also implies that the labour in manufacturing the products is performed in the United States. The representations were false because the products contained significant foreign components.

The proposed settlement would prohibit the Jore Corporation from misrepresenting the extent to which any of its products are made in the United States. It also contains a number of record-keeping and reporting requirements to assist the FTC in monitoring compliance with the terms of the order.

Australian Internet 'pagejacker' settles FTC charges

Australian defendant, Gregory Lasrado, has agreed to settle Federal Trade Commission charges for violating the FTC Act by hijacking unwitting Internet surfers.

Lasrado participated in a scam that copied existing websites and inserted coded instructions in the copycat sites to automatically redirect consumers to pornographic sites operated by the defendants. The scammers then disabled the browser's 'back' and 'exit' commands. Internet surfers trying to escape the images faced screen after screen of similar material and advertisements for other adult sites.

The FTC obtained a court order to permanently purge this scam from the Internet in default judgments against two defendants, WTFRC Pty Ltd and Guiseppe Nirta. Cross-border cooperation between consumer protection agencies (the Commission and the Portuguese Instituto do Consumidor gave invaluable assistance in this matter) sends a clear message to scammers that they cannot snub the law.

This case was investigated and evidence was gathered in the FTC's Internet lab. The lab was established to provide agency lawyers and investigators with hi-tech tools to investigate hi-tech consumer problems.

Domain name scam

The Federal Trade Commission has asked a US District Court judge to stop an Internet domain name scheme that dupes consumers into needlessly registering variations of their existing domain names by deceptively contending that a third party, acting in bad faith, is about to claim it. According to FTC estimates a minimum of 27 000 consumers may have been victim of the scam. Pending trial the court has issued a temporary restraining order, frozen the defendants assets and shut down their websites.

Consumers, many of them operating small businesses on the Net, received unsolicited faxes stating, 'URGENT NOTICE OF IDENTICAL DOMAIN NAME APPLICATION BY A THIRD PARTY'. The fax then lists four reasons why someone might want a copycat domain name, including disrupting the business of a competitor and luring customers away by creating a confusingly similar web address. The fax then offers to block the application by obtaining the copycat domain name for the fax recipient for a fee of \$70.

According to the FTC no third party has applied for the name, and the information in the fax is false and in violation of the FTC Act. As explained in the declaration submitted by the Internet Corporation for Assigned Names and Numbers, the purchase of domain names is instantaneous — there is no period during which an application is pending and could be challenged.

The FTC has asked the court to issue preliminary and permanent injunctions to bar the deceptive marketing practices.

From Canada

The following items come from the Competition Bureau's website at <<http://competition.ic.gc.ca>>.

Immunity program helps fight against bid-rigging

A fine of \$800 000 was imposed on the Freyssinet Limitée company for an international bid-rigging scheme relating to the Hibernia project in St. John's Newfoundland. Another company, VSL Corporation based in Switzerland, was granted immunity in return for being the first to approach the Competition Bureau with information on the bid-rigging case.

Johanne D'Auray, Deputy Commissioner of Competition, said that this was an excellent example of the Bureau's immunity program in fighting conspiracies to rig bids. Freyssinet Limitée, headquartered in Montreal, Quebec, pleaded guilty to rigging a bid to supply and install a system to reinforce the concrete base of the Hibernia Development project.

Bid-rigging is an agreement whereby one or more bidders on a contract do not submit bids or where those who do bid on the contract agree to submit a pre-arranged price. It is only considered an offence if the parties to the agreement fail to make their intentions known to the potential purchaser before submitting their bids. The Competition Bureau offers an education program to assist in the detection and prevention of bid-rigging.

Arrests made following unsolicited Internet mailings

The Competition Bureau announced that three people were arrested and charged under the misleading representation and deceptive market practices provision of the Competition Act after unsolicited mailings for an Internet business directory. Two corporations were also charged for the same alleged offences.

The mailings were sent to about a quarter of a million businesses and charities in the Province of Quebec. Recipients were to send a payment to a postal box in the Toronto area for an Internet business directory, *Yellow Business Directory.com*, which listed the details of their

organisation. The misleading representation charges are based on the mailings looking like invoices or bills when they were solicitations, and on the recipients being made to think they were already customers of the Internet business directory.

The Competition Bureau has applied to the Canada Post Corporation for interim prohibitory orders for mail addressed to or posted by the companies and persons operating the Internet business directory.

Guidelines released on abuse of dominance in the airline industry

On 8 February 2001 the Competition Bureau released its draft guidelines for consultation on the abuse of dominance in the airline industry.

They are intended to provide guidance to industry participants about the type of conduct that the Bureau would be likely to challenge and the Bureau is awaiting comments from interested parties.

From New Zealand

The following items came from the NZ Commerce Commission's media releases listed on its website at <<http://www.comcom.govt.nz>>.

'Free' must mean no extra cost

Car dealer, Greymouth Car Centre Limited, was fined \$7000 in the Greymouth District Court for charging up to \$2000 for what it described as 'free' warranties.

Commission Chair John Belgrave said that there are two messages from this prosecution. First, the Commission's crack down on false claims made by car dealers is continuing and second, for all advertisers, 'free' must mean no extra cost.

Window cards on cars in the Greymouth Car Centre listed 'cash' and 'wholesale' prices and offered a 'free 2 year unlimited K's warranty'. It did not state that consumers would only get what was being promoted as a 'free' warranty if they paid the higher price for that car. Even if the advertising had disclosed the extra cost for the warranty it would still have been misleading

and a breach of the Fair Trading Act to call it 'free'. This was the fourth prosecution of a car dealer in the past few months.

prices in New Zealand were fixed at these meetings. The Commission does not feel that it can take action because of insurmountable jurisdictional issues and an inability to collect sufficient evidence.

The Commerce Commission and 2001

The Commerce Commission has six issues on which it will focus special attention this year. The issues are:

- developing its new responsibilities in the telecommunications industry;
- developing its new responsibilities in the electricity industry;
- revising its *Business Acquisitions Guidelines* in line with amendments likely to be made to the Commerce Act;
- focusing enforcement action against false or misleading claims made by real estate agents; and
- focusing enforcement action against false or misleading claims made by car dealers.

Areas of particular concern for the Commission under the Fair Trading Act are false or misleading claims about real estate and cars, as the family home is the biggest purchase most consumers will make and their car the second biggest. These are also the industries about which the Commission receives the most complaints. Up until last year the Commission put a lot of effort into education. Complaints did not decrease and the Commission has moved from education to court action.

Commission not able to take action against vitamin cartel activity

Even though the Commerce Commission believes that a cartel for vitamins existed in New Zealand, it has announced that it is not able to take action.

The statutory time limit for the prosecution of price fixing is three years in New Zealand. As the first price fixing agreement took place between 1990 and 1994, the Commission believes that its right of action is extinguished for this matter.

The second agreement was reached through a series of meetings in Asia and Europe which representatives of the New Zealand subsidiaries did not attend. It is, however, believed that