
International developments

New MOUs

A cooperation arrangement was signed on 30 July 2002 by the Taiwan Fair Trade Commission, the New Zealand Commerce Commission and the ACCC.

The ACCC also signed an MOU (memorandum of understanding) with the Fiji Commerce Commission in April. The MOU is designed to increase cooperation and information sharing between the two bodies.

The new arrangements will help in cross-border investigations and in information sharing between the countries.

From the UK

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

Misleading domain name ads stopped in UK/US joint action

In the first case of its kind the OFT, working with the US Federal Trade Commission, recently stopped two companies from publishing misleading advertisements for website domain names that are difficult to view on the world wide web.

Quantum Management Ltd and TLD Network Ltd, based in London, were advertising and selling domain names with suffixes such as .brit, .usa, .scot and .sex to UK and US consumers. Most domain name suffixes such as .com, .net or .uk can be accessed by all Internet users. However, the domain names offered by the two companies can only be accessed through alternative networks and will not be found by a normal search function without a modified web browser.

Quantum Management and TLD Network sent out unsolicited email and advertised on their websites promising that 'the latest domain name extension

had arrived'. The OFT decides the adverts gave the impression that the domain names on offer operated in the same way as top-level names such as .com and that this was misleading.

From the US

French executive jailed for anti-competitive behaviour

A French executive will serve 90 days in a US jail after pleading guilty to participating in an international conspiracy to suppress competition. The charges were brought after an investigation by the US Department of Justice.

Jacques Jourdan, an executive of Elf Atochem SA, was charged with allocating US market share in the industrial chemical market for monochloroacetic acid (MCAA) between 1997 and 1999. Chemical giant Elf Atochem had previously been fined US\$5.1 million for its role in the conspiracy. Jourdan agreed to plead guilty to the felony charges and pay a US\$52 000 fine in conjunction with the jail sentence.

Jourdan was accused of participating in meetings at which market share of MCAA in the US and other countries was discussed and allocated between participants. Two other European corporations and executives were charged in relation to the MCAA agreements. A French and a Dutch executive were also sentenced to 90 days jail after pleading guilty. Akzo Nobel Chemicals BV, a Dutch chemical company, was fined US\$6.95 million for its role in the anti-competitive agreements.

Jourdan, and all other parties who have pleaded guilty so far, are cooperating with the US DoJ in the continuing investigation into the MCAA market.

The above article summarises information available at <http://www.usdoj.gov/atr/public/press_releases/2002/200122.htm>.

Alternative health

Operation Cure.All 2002 surf

The FTC recently announced the results of the latest 'Operation Cure.All 2002' health claims sweep. This sweep was conducted as part of an international Internet health sweep, led by the ACCC and participated in by 19 members of the International Marketing Supervision Network (IMSN). After the sweep the FTC sent more than 280 warning letters to domestic and foreign sites that were identified as making questionable claims for health-related products or services. These websites promote dietary supplement products for treating diseases such as arthritis, cancer and HIV/AIDS. The FTC and the Food and Drug Administration (FDA) will revisit these sites to see if they comply with FTC and FDA laws.

The US-sponsored sweep focused on websites marketing products and therapies for arthritis, cancer and HIV/AIDS. Other IMSN partners also searched for sites promoting questionable products for weight loss and sexual performance enhancements. The international sweep identified over 1400 questionable sites.

Joint consumer education initiative with NIH-ODS

In commenting on how hard it is to distinguish good Internet information on health from bad, Dr Paul Coates, Director, National Institutes of Health, Office of Dietary Supplements, said:

Consumers should know that just because a dietary supplement is widely marketed, it does not necessarily mean that proof of its efficacy or safety has been established.

While there exists strong evidence for some, there is little or no evidence for others. For example, consider *essiac* tea. This product has been widely marketed to treat certain cancers; however, there are no clinical trials proving that it is effective for this purpose. In addition, some products might cause serious health risks, such as *comfrey* and *aristolochia*. Before using any dietary supplements, consumers should consult reliable sources of information provided by government agencies, independent public health organisations, and academic and research institutions.

The FTC, the NIH Office of Dietary Supplements, the FDA, and other sister agencies have compiled a list of valuable and reliable sources of health information for consumers which is available at <<http://www.ftc.gov/cureall>>.

Cancer treatment company settles

A Southern California-based company that touted safe and effective alternative treatments for cancer has agreed to settle FTC charges. BioPulse International, Inc., BioPulse, Inc., and their principals advertised in print and on the Internet that their therapies—'insulin-induced hypoglycemic sleep therapy' (IHT) and 'Acoustic Lightwave Therapy' (ALW)—could effectively treat a wide variety of cancers and other serious diseases. The IHT therapy involved injecting insulin into cancer patients to 'starve' cancer tumours, among other things. Typically, this regimen required insulin injections for up to seven weeks, costing up to US\$39 900. ALW was based on the so-called 'Rife machine' technology, which allegedly worked by emitting frequencies that purportedly destroyed cells or organisms that caused, for example, arthritis, diabetes, flu, headaches, lyme disease, pneumonia and some cancers.

As part of the settlement with the FTC, the defendants are permanently barred from misrepresenting the safety of IHT or any similar treatment and from making any unsubstantiated safety or efficacy claims for IHT, ALW, or any dietary supplement, food, drug, device, or any health-related service.

US\$16.5 million in redress to be paid by medical billing scammers

The US District Court for the Central District of California has ordered Medicor LLC, Andrew Rubin and Matthew Rubin to pay more than \$16.5 million to consumers who were victims of the defendants' medical billing scam.

The FTC alleged that the defendants engaged in a telemarketing scheme from mid-1999 to 2001 whereby they deceptively sold work-at-home medical billing opportunities to more than 40 000 people. According to the FTC, affected consumers generally responded to advertisements in local newspapers touting large salaries and the need for at-home workers to perform medical billing work for doctors in their community. When consumers called the defendants' toll-free number, telemarketers made additional deceptive claims to induce consumers to purchase the medical billing business opportunity. The FTC's complaint alleged that among other things the defendants misrepresented projected earnings and that they would arrange for consumers to receive medical billing work from physicians.

Advance-fee loan company to pay US\$3 million in redress

American Savings Discount Club (ASDC) and two individual defendants were recently banned for life from credit-related telemarketing and will be paying back almost US\$3 million to affected consumers. ASDC (also known as The Tungsten Group) agreed to these provisions in settling a complaint filed jointly by the FTC and some state attorneys-general. The complaint alleged that the company pitched a fraudulent advance-fee loan promotion to hundreds of thousands of consumers nationwide. According to the FTC, the defendants enrolled the consumers who signed up for the purported advance-fee loan program, without their knowledge, in a 'discount club', and required them to be 'members' of the club for three months before applying for the promised loan. Additionally, the defendants charged consumers a \$30 monthly membership fee to remain in the club and be 'eligible' to apply for the loan.

According to the FTC, the sole source of the loans to other consumers was the defendants' own funds, with an ever-increasing number of consumers needed to fund the new loans. If the defendants charged one consumer \$100 on one day, for example, they would have to find four additional consumers to be able to lend that first consumer \$500. Consumer expectations thus grew exponentially, with less and less money available to pay out.

From Canada

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

Telemarketing tactics used against telemarketers

The Competition Bureau recently participated in a consumer awareness campaign, 'Hang Up On Fraud', to educate consumers about criminal telemarketing activities. During the one-day campaign, 80 volunteers called residents throughout the province of Manitoba, with a consumer protection message, including tips when receiving a telemarketing call.

Partners in the campaign included the Competition Bureau, the Royal Canadian Mounted Police, Project PhoneBusters, the Winnipeg Police Service, the Province of Manitoba Consumer and Corporate Affairs and seniors organisations.

From New Zealand

ACCC/Commerce Commission cooperation in betting case

The Commerce Commission's Director of Fair Trading Deborah Battell recently welcomed the news that, after court action by the ACCC, the Federal Court in Brisbane found that an ex-New Zealander, Robert James Price, had misled consumers and, in one instance, acted unconscionably in connection with the marketing and sale of horse betting software in Australia and New Zealand. The successful action came after a lengthy cooperative investigation by the ACCC and the Commerce Commission. (See Enforcement chapter of this journal for a full report.)

Ms Battell said:

This is cross-border co-operation working at its best. We overcame jurisdiction limitations and worked with our Australian counterparts to achieve a good outcome. Both the [Commerce] Commission and the ACCC were investigating the activities of Australian based Price and his companies. We liaised with the ACCC on its investigation, and provided some additional information, which included affidavits from several New Zealand consumers.

The [Commerce] Commission first became aware of Price and his company, Offtrack Investments Limited, in May 2000. The Commission received information from consumers who had paid NZ\$9700 for the software and were concerned that it was not working as promoted. The product had been advertised in New Zealand newspapers.

The [Commerce] Commission opened an investigation, which revealed Offtrack was registered in Australia and one of three companies operated by Mr Price. The [Commerce] Commission formally warned Price that his company was at risk of breaching the Fair Trading Act and then advised the ACCC's Consumer Protection department of its investigation. The Commission asked the ACCC to include the New Zealand consumers in their investigation which they subsequently did.

Seven of the 15 witnesses that formed the ACCC's final case were New Zealanders.

Ms Battell confirmed that the Commerce Commission is monitoring the promotion of similar programs. Last year it issued a warning to Auckland-based Connaught Limited for alleged false and misleading statements about the success of its computer share charting program.

Misleading juice claims

Two juice companies were recently prosecuted in district courts for misleading consumers.

Rio Beverages Limited was fined \$22 600 plus costs in the Auckland District Court. A Commerce Commission investigation revealed Rio's marketing of its Thexton-branded cranberry, orange, pink grapefruit and red grape products emphasised their health benefits, with the labelling of the products highlighting the inclusion of echinacea and its ability to assist in warding off winter colds and the flu. Analyses indicated that people would need to drink as much as 177 litres per day of the Thexton's beverage product to obtain any of the health benefits of echinacea.

Labelling of the Thexton's branded blackcurrant beverage stated it contained 10 per cent blackcurrant juice but analysis showed it to be about 4 per cent, a figure corroborated by Rio's production manager who advised the beverage was made with 5 per cent blackcurrant juice.

In the other case, Double R Softdrinks was fined \$4000 plus costs. Its breaches included claims that a drink contained '100% orange juice' when it contained no more than 45 per cent, and that it was 'sweetened by nature' when it had sugar added.

Commerce Commission Director of Fair Trading Deborah Battell said:

... more and more drinks manufacturers are adding substances such as echinacea, calcium, guarana and vitamins to their products, claiming health-related benefits. In some cases, these drinks are packaged to look like fruit drinks but in fact contain very low percentages of fruit juice.