

# TRADE PRACTICES LAW JOURNAL

Volume 14, Number 4

December 2006

## EDITORIAL

<b>It takes three to tango</b> .....	197
--------------------------------------	-----

## ARTICLES

### **Cartels – criminal sanctions and immunity policy** – *Bill Reid and Elizabeth Henderson*

Cartel regulation is drawing increased interest across the globe as nations “get serious” about cartel deterrence and increase cooperation with their contemporaries. In Australia, regulation of collusive practices is changing. Penalties have increased significantly and criminalisation of serious cartels is proposed. Even with these changes, however, the question remains: will cartel activity be extinguished or are the rewards of collusive behaviour too great a temptation? This article explains the changes afoot in Australia and examines the potential effects in Australia’s concentrated industries. ....	199
---	-----

### **Misleading and deceptive conduct: Immunising the intermediary – the conduit defence** – *Peter Gillies*

This article examines the circumstances in which an intermediary who passes on information supplied by Party A to Party B breaches s 52 of the <i>Trade Practices Act 1974</i> (Cth) and its cognates. It posits that the courts, by a process of statutory construction, have erected immunity for the intermediary, one extending further than the quite narrow statutory immunities provided to corporations alleged to have infringed s 52 and other provisions, and analyses the elements of this immunity (or “conduit defence”). The article proposes that the High Court, in its 2004 decision in <i>Butcher v Lachlan Elder Realty Pty Ltd</i> (2004) 218 CLR 592, has expressly articulated a policy-based control on the intermediary’s liability, one sufficiently broad to qualify the absolute liability imposed upon s 52 and its cognates. It queries whether a general defence of honest and reasonable mistake should, consistently with this line of authority, be provided for in the Act. To do so would be to replace absolute liability, where it is provided for by the Act (eg in respect of s 52) with strict liability. ....	209
---	-----

## CONSUMER PROTECTION

<b>Drug advertisements: A prescription for misleading and deceptive conduct?</b> – <i>Damien Millen</i> .....	220
---	-----

## CASE NOTES

<b>Do judges buy chocolate and does it matter?</b> – <i>Dr Caron Beaton-Wells</i> .....	228
<b>Going down to the local: ACCC v Liquorland (Australia) Pty Ltd and Woolworths Pty Ltd</b> – <i>Catherine Bembrick</i> .....	234

## COMMENTS FROM COMMERCE

<b>A business view – really?</b> – <i>Steven Münchenberg</i> .....	238
--	-----

REPORT FROM EUROPE	
<b>New German act against unfair competition – <i>Dr Professor Holger Buck</i></b> .....	242
WORTH REPEATING .....	246

---

**VOLUME 14 – 2006**

Table of authors .....	253
Table of cases .....	255
Index .....	263

# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Trade Practices Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [tplj@thomson.com.au](mailto:tplj@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.thomson.com.au/support/as\\_contributors.asp](http://www.thomson.com.au/support/as_contributors.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 7,000 words for articles or 3,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
  - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
  - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
  - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
  - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
  - For international cases best references only should be included.
3. **Legislation should be cited as follows:**  
*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**  
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
    5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**  
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
    7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**  
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Trade Practices Law Journal* comprises four parts a year.

Customer service and sales inquiries:  
**Tel: 1300 304 195 Fax: 1300 304 196**  
**Web: [www.thomson.com.au/legal/p\\_index.asp](http://www.thomson.com.au/legal/p_index.asp)**  
**Email: [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)**

Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1039-3277

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW