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EDITORIAL

An Act for All Seasons 3

ARTICLES

Illusory Influencers and the Inadequacy of the Current Regulation of Social Media Advertising in Australia – *Mekayla McMahon*

Social media advertising represents a new era of marketing that allows businesses to interact with consumers on a vast range of platforms. Advertising on social media can be potentially misleading or deceptive due to the lack of disclosure by Social Media Influencers (SMIs) to their audiences as to the commercial arrangements underpinning products that they promote. This article explores how regulated disclosure obligations might help to combat the deceptive nature of what is referred to as “native advertising”. Previous research on this topic has predominantly been approached from a marketing perspective. However, this article will focus on consumer protection regulation. The relevant legislative frameworks in the United Kingdom will inform a potential model which could be adopted in Australia to ensure regulation is adequate. Examining ways of protecting consumers from misleading or deceptive advertising in the new era of social media marketing is the core purpose of this article. 5

Who is Responsible for an Internet of Unsafe Things under the Australia Consumer Law? – *Dr Evana Wright, Professor David Lindsay and Dr Genevieve Wilkinson*

Internet of Things (IoT) devices are ubiquitous, with connected devices found in a diverse range of fields, including industry, transport, agriculture, health care and the home. IoT devices pose challenges to security and privacy, and existing laws in Australia are insufficient to address the risks posed. The loss or damage from exploiting insecure IoT devices can include physical injury, damage to property, loss of data, invasion of privacy and exposure to future harms, such as theft or fraud. There is uncertainty about how the product liability and product safety regimes under the *Australian Consumer Law (ACL)* apply to consumer IoT devices, especially where harm arises due to security vulnerabilities. This article explores the issues in applying the product liability and product safety regimes under the ACL to insecure consumer IoT devices and provides recommendations for reform to ensure that the ACL is responsive to emerging technologies and protects IoT consumers from harm. 16

Two Steps Forward, Four Steps Back: Threats Facing Australian Criminal Cartel Convictions after Country Care and ANZ – *Alan Zheng*

The history of antitrust is unified by a common thread that cartels are, as Adam Smith saw them – a “conspiracy against the public” and in the late Justice Antonin Scalia’s words, “the supreme evil of Antitrust”. However, their criminalisation is a relatively modern chapter

in that story. Nearly two decades on from the Dawson Review’s broad and imprecise recommendation that there should criminal sanctions for “serious” cartel behaviour, there are now outcomes from two contested criminal cartel cases in *Commonwealth Director of Public Prosecutions v The Country Care Group Pty Ltd* and *Director of Public Prosecutions (Cth) v Citigroup Global Markets Australia Pty Ltd*. This article identifies and evaluates a substantial set of legislative, forensic and policy-based obstacles, as evidenced in both cases, which will complicate criminal cartel convictions in Australia going forward. 29

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