EDITORIAL

How to write a first-class case note ........................................................................................................... 5

ARTICLES

The less said – the worse: Silence as misleading and deceptive conduct – Frederika De Wilde

Is silence golden under s 52 of the Trade Practices Act 1974 (Cth)? The purpose of this article is to review s 52 where failure to disclose relevant information may constitute an unfair trading practice in certain circumstances. This article provides an in-depth critique of the reasonable expectation test as applied in Demagogue Pty Ltd v Ramensky. It concludes by presenting productive recommendations on the law’s future direction. ........ 7

Ensuring effective competition in rapidly evolving telecommunications markets – Dr Niloufer Selvadurai

Telecommunications markets are characterised by constant and rapid technological change and evolution. It is now 10 years since the present telecommunication competition laws of Pts XIB and XIC of the Trade Practices Act 1974 (Cth) were introduced. During this time, there have been significant changes to networks, infrastructures and business operations. The issue of reform is however gaining the attention of law reformers. In 2005 the government released an issues paper on Telecommunications Competition Regulation. In 2003, the European Union introduced an innovative new framework for the regulation of all electronic communications. This article addresses the topic of the continuing effectiveness of Pts XIB and XIC, and considers the extent to which the government’s issues paper addresses the identified weaknesses of the present regulation. The article analyses the new European regulatory framework to ascertain whether the model is of assistance in designing an effective telecommunications competition regulatory framework for Australia. ........................................................... 27

RESTRICTIVE TRADE PRACTICES

The High Court on severance – John Duns .............................................................................................. 42

CASENOTES

Crown immunity – has its time passed? – Fleur Ramsay ................................................................. 47

Compliance program undertakings – watch out for an impermissible delegation of power – Patrick Garcia ...................................................................................................................... 51
REPORT FROM AFRICA

Price discrimination – David Unterhalter SC ................................................................. 58

REPORT FROM NORTH AMERICA

Dealing in imaginary goods: Implications for antitrust and intellectual property policy – Christopher Pleatsikas and Andrew D Schwarz ................................................................. 61
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, for forwarding to the Editor. Licence agreements can be downloaded via the internet at 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 reprints 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 manuscript 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:
   - In footnotes do not use ibid or op cit. The following style is preferred:
   5. Austin, n 4, p 56.
5. Journals should be cited as follows:
   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:
   7. Sheehy et al, n 6 at 221.
6. Internet references should be cited as follows:

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