



**BUCHANAN LAW**  
Intellectual Property and Technology

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## **ACCC CRACK DOWN ON MISLEADING ADVERTISING IN THE TELECOMMUNICATIONS SECTOR**

*Recent legal proceedings initiated by the ACCC involving separate cases against Telstra & Crazy Johns highlight the extra risks associated with advertising telecommunications related goods and services. In this case note we bring you up to date on recent misleading ad. campaigns and then distil some important lessons to be learned to guide future campaigns.*

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### **ACCC not so crazy about CJ's latest campaign**

Last week the Australian Competition and Consumer Commission (the **ACCC**) instituted proceedings against Mobileworld Operating Pty Ltd (trading as **Crazy John's**) for alleged contraventions of the *Trade Practices Act 1974* (the **TPA**). The ACCC alleges that Crazy John's engaged in misleading and deceptive conduct by representing that handsets on its Crazy Phone Plans are available 'FREE' or for '\$0', when in fact consumers are required to pay for the handsets through higher call rates than those available on comparable plans which do not include a handset.

The ACCC alleges that these representations are in conflict with section 52 (misleading or deceptive conduct) and section 53 (misleading representations with respect to the price or goods of services) of the TPA. The ACCC is seeking a range of remedies including declarations regarding the alleged contravening conduct and corrective advertising.

### **Telstra's CDMA woes**

The action taken against Mobileworld follows very similar proceedings in the Federal Court brought against Telstra in September 2007. In that case the Federal Court held it was found that Telstra had engaged in misleading and deceptive conduct by representing:

- Telstra's Next G Network had "coverage everywhere you need it"; &
- Next G customers would get the same or better coverage as on the CDMA network.

Where, "In fact, whether a user could obtain coverage depended in part upon where that person was, what handset that person was using and in some cases whether that handset had an external antenna attached" (Justice Gordon).

## LESSONS TO BE LEARNED:

From our observations of the above cases and from our experiences more generally advising our Telco clients, we have distilled the following lessons relating to Telco Advertising:

- Comparative advertising requires special care in the telecommunications sphere because of the rare instances where one company is comparing “like with like”. For example price comparisons between broadband telephony and traditional fixed line telephony is fraught with danger because of the potential need to disclose additional costs and service limitations associated with the “cheaper” service being advertised.
- Although disclaimers can be useful, they cannot be a “cure all”. Disclaimer drafting is a precise art and one limited by the need to understand that great sins cannot be covered through placement of a disclaimer.
- Ensure that however creative, sneaky and potentially effective future marketing campaigns may appear, that they still remain within the boundaries of the TPA.
- Ensure that when promoting the coverage of services, any claims made reflect real world experience.
- Purely as a “rule of thumb”, always ask yourself whether the *least sophisticated* would-be user of the product or services being advertised might be misled by the advertising?
- Remember, though: prevention is always better than cure. Always err on the side of caution by ensuring full disclosure in relation to advertising material and obtaining proper legal advice on it PRIOR to the launch of any new marketing campaign.

The above cases demonstrate that the ACCC’s eyes are focused firmly on the telecommunications industry. Please contact us if you require any further information about the above cases or to learn how we can assist in providing clearance advices for future campaigns.

### Contact us

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### Buchanan Law – who we are

Buchanan Law is a legal practice with a difference. Our primary focus is on the commercial aspects of intellectual property, telecommunications, technology and innovation law. We are leaders in our chosen practice areas, providing specialist and commercially oriented legal advice and creative solutions.