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NEWS

Edition: December 2009

The Partners and Staff wish you the compliments of the season and advise this office will close at 12:00 pm on **Thursday 24th December 2009** and re-open at 8.30 am on **Monday 4th January 2010**.



Consumer Protections - "was/now" advertising & "free" products

The Australian Competition and Consumer Commission actively monitors discount-pricing promotions. If a trader is determined to have acted unlawfully, ACCC can require the trader to provide a court enforceable undertaking, publish a public retraction, enter into restraints in relation to future conduct, donate to charity the profits from the misleading conduct and promise to undergo a trade practice compliance program.

Unlawful advertising includes 'was/now' advertising where the 'was' price was not offered for sale for a reasonable period immediately before the promotion. This form of advertising is misleading because it misrepresents to the public that the 'was' price was the usual price at which the item was offered for sale immediately before the promotion.

Unlawful advertising also includes offering a product for sale and promising to give the consumer a second product for free when you have already factored the cost of the second product into the cost of the first product. This is a misrepresentation because the consumer has in fact paid for part or all of the allegedly 'free' product.

For more information see ACCC v Prouds Jewellers Pty Limited [2008] FCA 75 and the Moving Juice Undertaking given to ACCC on 19 December 2008 or give us a call.

Terminating a contract without consequences.. how it's done

If you have promised to carry out certain obligations for a certain period of time and before that time expires, you wish to get out of that obligation, can you terminate the agreement? And if so, what consequences will follow?

Your rights of rescission or termination may arise:-

1. from a subsequent agreement which either expressly or impliedly removes or replaces the original contractual obligations.
2. from an express terms in the contract or agreement.
3. from a substantial breach of a fundamental contractual term by the other party.
4. from the general law by reasons of fraudulent misrepresentation, honest misstatement, mistake or fundamental error.
5. under statutory provisions or statutory warranties such as under the Trade Practices Act 1974, Contract Review Act, the Conveyancing Act 1919 or other prescriptive Acts which relate to misleading or deceptive conduct, harsh terms, unfair contracts etc.

The potential entitlement of another party to obtain compensation, damages or some other remedy from you for early termination will depend on which of the above legal basis you rely on for the early termination. It may have been intended in the contract that any early termination under a particular clause will not give rise to a right of remedy against you. This would provide a clear contractual right for you to terminate without consequence. But there may be no clear contractual right and you may have to rely of another area of law such your statutory protections.

Established in 1945, Maclarens Lawyers are accessible and approachable and offers a complete range of services to corporations and individuals.

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Recent Legislative Changes

The Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2008 came into effect on the 24th July 2009. As a consequence, there are now 4 new offences of "Cartel Conduct" under the Trade Practices Act 1974 (Commonwealth) ("TPA"). These cartels prohibit both the making of and giving effect to a cartel.

Under new section 44ZZRD(1) of the TPA, a cartel is a provision that relates to, firstly, (a) price fixing, (b) restricting outputs in the production and supply chain, (c) allocating customers, suppliers or territories, or (d) bid-rigging and secondly, by parties that are or would otherwise be in competition with each other. Both criteria must be met. That is, the arrangement or conduct must fit within the explicit definitions of (a) to (d) purposes and the parties to the arrangement must be in competition with each other.

Consequences for breaching these new provisions include the following.

- For an individual, imprisonment of up to 10 years and/or fines of up to \$220,000.00 per contravention, and
- For a corporation, fines of the greater of \$10 million dollars or 3 times the total value of the benefits obtained or 10% of the corporate groups annual turnover in the 12 month period when the offence occurred, per contravention.

With over 64 years of experience servicing our local and expanding Western Sydney community needs, Maclarens Lawyers are qualified to meet your requirements and to protect your interests. Whether your files are big or small, complex or urgent, we have the right brilliant legal mind waiting to take care of your affairs.

protecting your interests

Find us in Yellow Pages!

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Are you properly insured?

Are you bound by a lease, supply agreement or other agreement which requires that you take out and maintain an insurance policy? Did you take out the right policy? Have you insured for all reasonable risks? Do you understand your rights and obligations?

An insurance policy is an indemnity for a risk or liability arising from a specified object. There are different from guarantees, contractual indemnities, releases or warrants. They are useful to ensure that you, perhaps as proposed debtor, are able to perform your obligations and can meet your liabilities.

There are many different types of insurance products offered by insurers. They include:-

- Workers compensation
- Public liability
- Professional indemnity
- Property all risks
- Business interruption
- Contract works
- Advanced consequential loss
- Directors and officers liability
- Information technology liability
- Product liability
- Credit/trade liability
- Builders risk
- Industrial special risks policy
- Transit and Marine

Insurance policies may be drawn on an occurrence basis or a claims basis, a difference which is essential for you to become familiar with. If your insurance is written on a claims basis and you have ceased trading you must still ensure that you have obtained some form of insurance (eg. run off insurance) for your entire period of risk, which in many scenarios will be 6 years depending on the type of claim.

You need to take care to understand who wears the risk, whose name the insurance is under and who the beneficiaries are.

Make sure you are aware of any limits of liability under your policy.

So take care to review your policy regularly and get legal advice if you are unsure about the type of insurance required or the terms of your insurance policy.

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Business Services

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Companies and Trusts
Commercial Disputes
Local Govt/Land & Environment
Liquor Licensing

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