
Small business

Small business directories

In the last few years the Commission has investigated a number of dubious business directories. Promoters of such directories have often targeted small business, many of which have been misled. For example, small businesses have been persuaded to pay for advertising they did not want or agree to. Misrepresentations have included that:

- the business has agreed to advertise in a directory when no such agreement had been reached;
- the directory was a government or charitable publication, or associated with a government department or charity, when this was not true;
- the business is required by law to advertise in the directory when there is no such requirement; or
- the directory's coverage or distribution is greater than it actually is.

The Commission seeks to protect small businesses from unscrupulous promoters of business directories by educating them about their rights and the risks of being misled.

Where there is sufficient evidence, the Commission may also take enforcement action, including legal proceedings, against promoters who blatantly mislead large numbers of small businesses.

In a recent Commission court case in Perth, Western Australia, the Federal Court sent a clear message to such promoters. In the proceedings the Commission alleged that a Gold Coast based business directory, Australian Purchasing and Tender Service Pty Ltd (APTS), trading as Government Purchasing and Tender Index, and the individual promoters, Suzanne Johnston and Clinton Andela, had sent forms to small businesses throughout Australia.

The Commission alleged that the forms misrepresented that:

- APTS was a government body or affiliated with a government body;
- businesses were required by law to register; and
- businesses were able to supply products or services to government departments only if registered with APTS.

Justice Lee made orders against APTS and the individual promoters, including injunctions preventing the parties from being involved in **any** form of register or list in the future. The two individuals were also ordered to pay the Commission's costs.

In his reasons for judgment, Justice Lee made a number of severe comments with respect to the conduct of the promoters describing it as 'audacious, elaborate and fraudulent'. Justice Lee went on to say that the conduct of APTS:

... involved elements of sharp practice. The Bar code was bogus. There was no 'Index' maintained under Government authority ... The envelopes marked 'OHMS' were not used for Government purposes and APTS was not authorized by Government to so represent. APTS could not provide any service in the terms represented in the distributed form.

Justice Lee recognised the need for orders that were strong enough to provide ongoing protection to small businesses, stating that:

orders should be made in terms which are broad enough to provide protection for the public ... and to deter others from engaging in similar conduct.

The Court also stated its concern over the involvement of Mr Andela in other legal proceedings in which he had been restrained from engaging in similar conduct.

Commission experience indicates that it is common for promoters of misleading business

directories to operate one directory until government authorities shut it down or it gets a bad name, only to start trading under a different directory name. The injunctions made by Justice Lee send a strong message to promoters that if they regularly engage in misleading conduct they may be prevented from carrying on any form of register either directly or indirectly.

As part of its education role the Commission has published a checklist for small businesses to ward against the risks of being misled by business directories. The publication, titled *Scams*, is available from all Commission offices. Businesses wishing to obtain more information about trade practices law and business directories, or the enforcement actions taken by the Commission, should also contact their local Commission office.

Ethnic small business program

The Commission's small business program aims to educate small business about its rights and obligations under the Trade Practices Act. It uses several avenues of delivery to reach small business operators. In particular it has developed innovative approaches to target business people with overseas backgrounds who may also face unreasonable business conduct.

The Commission's research into the patterns and circumstances of ethnic small business identified areas of need and opportunities for the Commission to improve its contact with this sector. The research report has guided the Commission in focusing on groups with the highest percentage of small business operators, such as the Korean, Turkish, Vietnamese, Chinese, Arab, Greek and Italian communities.

The program gained considerable impetus in 1998 with the appointment of small business officers in each of the Commission's regional offices. These officers have specific responsibility for liaison with ethnic industry and in each capital city the Commission has expanded its direct contact with ethnic business associations.

The Commission has conducted seminars for associations of ethnic small businesses in

Sydney and Melbourne and published information about the Trade Practices Act in association newsletters and in the ethnic press.

Recently the Commission increased its profile in the Chinese community by distributing Chinese language pamphlets on the new unconscionable conduct provisions of the Trade Practices Act.

It used several new methods to engage the community to ensure that the pamphlet reached its potential readers. In Melbourne, Commission staff met with Chinese community leaders to assess distribution opportunities. Commentary on the pamphlet was published in Chinese language newspapers together with information on where readers could obtain copies. In Sydney, following discussion with the Chinatown Chamber of Commerce, Commission staff used a specialist mailhouse to place pamphlets in Chinese businesses; a method which allowed a high rate of absorption. In Brisbane, which has a smaller and highly localised Chinese business community, Commission staff delivered them direct. In Western Australia, the Chinese Chamber of Commerce direct mailed the pamphlet to its members.

The full text of the brochure together with commentary was also published in several Chinese language newspapers, reaching about 110 000 readers.

Korean language pamphlets are currently being prepared for distribution in Sydney, the seat of Korean business.

Regular spots on SBS ethnic radio have also become a feature of the small business program.

The feedback the Commission has received on the program from associations and individuals has been positive and constructive. Other Commonwealth and State agencies have indicated that the program could become a model.

BizStart — a whole of government approach

As part of its outreach program to small business the Commission's Perth office is

participating in the *BizStart* information seminars coordinated by the Australian Taxation Office. The free seminars are targeted towards people starting, or thinking about starting, a small business. Their objective is to inform and assist people to understand their rights and obligations under the various legislation that impacts on small business.

BizStart was first run as a pilot program in Western Australia in 1996 and adopted nationally by the ATO in 1998. Issues covered in the seminars include rights and obligations under company legislation, State government taxes and duties payable by small business operators, industrial relations obligations, and trade practices issues.

These segments are presented by the Australian Securities and Investments Commission, State Revenue, the Western Australian Department of Productivity and Labour Relations, and the ACCC. Discussion is encouraged and trained agency staff are on hand to answer any questions.

The Commission's segment outlines a business operator's rights and obligations under the restrictive trade practices and consumer protection provisions of the Trade Practices Act. Since many people starting a business purchase a franchise, the presentation includes information on the Franchising Code of Conduct.

Apart from providing an efficient way of reaching intending and new small business operators, the Commission's participation in the *BizStart* seminars helps to strengthen links with other agencies working with small business.

The Commission is also collaborating with the ATO in the development of a CD for use by businesses across Australia. The CD will include the sessions presented at the *BizStart* seminars, with an interactive element to allow users to select information specific to their requirements.

For those interested in attending *BizStart* sessions, bookings can be made by telephoning the local ATO office or by visiting the ATO website at <http://www.ato.gov.au/general/business/bus.htm>