Enforcement

The following are reports on new and concluded Commission actions in the courts, settlements requiring court enforceable undertakings (s. 87B) and mergers opposed by the Commission. Other matters currently before the court are reported in appendix 1. Section 87B undertakings accepted by the Commission and non-confidential mergers not opposed by the Commission are listed in appendix 2.

Anti-competitive agreements (Part IV)

Qantas Airways Limited

Alleged misuse of market power (s. 46)

On 7 May 2002 the Commission instituted proceedings in the Federal Court, Sydney, against Qantas Airways Limited alleging that Qantas misused its market power on the Brisbane–Adelaide route after Virgin Blue Airlines Pty Ltd's entry in December 2000. It alleges that Qantas misused its market power and behaved anti-competitively by substantially increasing the number of seats available on the Brisbane–Adelaide route and matching or undercutting airfares in response to Virgin Blue's entry. The Commission alleges that Qantas engaged in 'capacity dumping', significantly increasing capacity beyond expected demand to eliminate or substantially damage Virgin Blue, or to deter or prevent Virgin Blue from engaging in competitive conduct in the market.

The Commission is seeking court orders including:

- penalties
- declarations that Qantas breached s. 46 of the Trade Practices Act
- injunctions restraining Qantas from misusing its market power by using capacity and fares for the purposes of unlawfully damaging a competitor or deterring competition
- an order requiring Qantas to implement a new trade practices compliance program or to upgrade its current program
- costs
- findings of fact.

The first directions hearing was held on 12 June 2002 with further timetables being set for the preliminary stages of the proceedings.

Leahy Petroleum Pty Ltd & ors

Alleged price fixing (s. 45)

On 21 May 2002 the Commission instituted proceedings in the Federal Court, Melbourne, against the following companies and individuals:

- Leahy Petroleum Pty Ltd, Leahy Petroleum–Retail Pty Ltd, and Mr Robin Palmer
- Triton 2001 Pty Ltd and Mr Anthony Rosenow
- Brumar (Vic) Pty Ltd and Mr Garry Dalton
- Justco Pty Ltd and Mr Justin Bentley
- Apco Service Stations Pty Ltd and Mr Peter Anderson
- J. Chisholm Pty Ltd
- Mr John Gourley and Mr Robert Levick of Balgee Oil (externally administered) Pty Ltd.

The Commission alleges the respondents entered into and gave effect to arrangements to fix retail petrol prices in the Ballarat region. It is alleged the respondents gave effect to the arrangement on 69 occasions between June 1999 and December 2000, that they arranged to raise prices by telephoning one another and communicating the size and approximate time of the price rise, and that they then contacted retail sites to implement the rise. It is also alleged that when one became aware that a service station had not raised it price, further calls were made to one another to try to have the site raise its prices. It is also alleged that the arrangement included meetings between competitors, including one in the private home of an employee of Mobil Oil Australia.

The Commission is seeking:

- penalties

- injunctions
- declarations
- findings of fact
- the implementation of a trade practices compliance program
- costs.

A directions hearing was held on 14 June 2002. The parties are completing interlocutory steps and the next directions hearing is listed for 13 September 2002.

Leahy Petroleum Pty Ltd & anor

Alleged resale price maintenance (s. 48)

On 21 May 2002 the Commission instituted proceedings in the Federal Court, Melbourne, against Leahy Petroleum Pty Ltd and its General Manager, Mr Robin Palmer in relation to the termination of supply to Mr Trevor Oliver. Mr Oliver, a Buangor service station owner, alleged that he had been telephoned by his supplier, Leahy Petroleum Pty Ltd, about a rise in retail petrol prices of about 10 cents at 10 a.m. that day. Several weeks after Mr Oliver made his allegations, Leahy Petroleum Pty Ltd ceased supplying his business.

The Commission alleges that telephone calls to Mr Oliver about prices and the withholding of supply to him contravened the resale price maintenance provisions of the Act.

The Commission is seeking:

- penalties
- injunctions
- declarations
- findings of fact
- the implementation of a trade practices compliance program
- costs.

A directions hearing was held on 14 June 2002. The parties are completing interlocutory steps and the next directions hearing is listed for 13 September 2002.

Mergers (Part IV)

Australian Pharmaceutical Industries Limited/Sigma Company Limited

Merger (s. 50)

The Commission announced on 17 April 2002 that it will oppose the proposed merger between API and Sigma. Both companies manufacture, wholesale and distribute pharmaceutical and healthcare products to retail pharmacies and hospitals. They also both provide support services to retail pharmacies, including the operation of retail pharmacy banner groups.

The merger would reduce the number of full-line pharmaceutical wholesalers in Australia from three to two and together API and Sigma would account for about 60–70 per cent of products wholesaled to retail pharmacies. The Commission was concerned about the proposed merger because:

- there are high barriers to entry (the high costs of entering the market and the marketing arrangements in place between pharmacies and wholesalers)
- retail pharmacies requiring a wide range of products need to use full-line pharmaceutical wholesalers
- an effective competitive force would be lost.

Market inquiries showed that pharmacists generally use full-line pharmaceutical wholesalers as primary suppliers. Other pharmaceutical wholesalers operate in niches but do not compete across the full range of products and cannot meet the full requirements of retail pharmacies. The Commission is concerned that the reduction of full-line wholesalers from three to two would reduce the quality of service provided to pharmacies and, consequently, to consumers.

The Commission concluded that the proposed merger would be likely to result in a substantial lessening of competition.

The parties have announced that they intend to lodge an application for authorisation of the merger.

Authorisation is a different process from that already undertaken by the Commission under s. 50 of the Trade Practices Act and has a different statutory test. In an authorisation, the Commission must decide whether the proposed merger would result, or be likely to result, in such a benefit to the public that it be allowed to take place.

Fair trading (Part V)

IT&T AG

Alleged misleading or deceptive conduct (s. 52), certain misleading conduct in relation to services (s. 55A), assertion of right to payment for unsolicited goods or services or for making entry in directory (s. 64)

On 28 March 2002 the Commission instituted proceedings in the Federal Court, Perth, against a Swiss-based company, IT&T AG, alleging it engaged in misleading and deceptive conduct in relation to an international fax directory operated by the company.

The Commission alleges that from May 2001 until about March 2002 IT&T AG sent unsolicited documents by mail from Switzerland to Australian business consumers about the IT&T International Fax Directory which is published on the Internet and available on CD-ROM from IT&T AG in Switzerland. The documents, which allegedly had the style and appearance of invoices, were typically for 'US$995.00' and offered a '3% discount if payment was made within 14 days'.

The Commission alleges that given the general appearance of the documents, including their design, layout and words, IT&T AG falsely represented that it had a previous business relationship with the Australian businesses, an existing right to payment, and that a payment to IT&T AG for listing the business in the directory was due and payable.

The Commission also alleges that the Internet version of the directory implies that the Australian businesses listed in the directory had corresponded with IT&T AG with a view to becoming a listed member and had given their authority for their particulars to be entered on the Internet Directory when this was not the case.

Remedies sought by the Commission include the following:

- declarations
- injunctions restraining IT&T AG from sending misleading documents to Australian business consumers and restraining it from listing in the directory the names of Australian businesses that do not give it written authority to do so
- corrective notices in the Australian press and on the IT&T AG website
- orders for the deletion of names on the directory and for the payment of refunds to businesses that paid the invoices
- the implementation of a compliance program by IT&T AG
- the Commission's court costs.

Danoz Direct Pty Ltd

Alleged misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(e)), performance characteristics of goods (s. 53(c)), liability for defective goods causing injuries (75AD)

On 3 May 2002 the Commission instituted proceedings against the promoters of a health and fitness industry product, the 'Abtronic'. It alleges that Danoz Direct Pty Ltd, sole director Mr Moshe Ozana, and others, engaged in misleading and deceptive conduct, or were knowingly concerned in the conduct, while promoting the Abtronic as a muscle stimulation machine. The Abtronic was promoted on Channel 10's *Good Morning Australia* and *Bright Ideas* programs, during 'infomercials' on Channels 10 and 7, in a Danoz product catalogue and on the company's website.

The Commission has sought orders granting permanent injunctions against Danoz Direct Pty Ltd for various alleged breaches of the Trade Practices Act. In particular, the Commission seeks to prevent Danoz from representing that the Abtronic has the following, or similar, performance characteristics, uses or benefits:

- that it is a brilliant training and toning tool
- that it can be used to work out and tone different muscle groups
- that it provides a vigorous workout for the abdominal region, the 'love handles', arms, buttocks, thighs
- that it can flatten your stomach 'once and for all'
- that you just sit, relax and watch your 'abs' tighten, your 'love handles' disappear and your thighs and bottom firm up—with no sweating involved
- that you can get the results of up to 600 sit-ups in just 10 minutes without any effort.

This matter has been set down for a 7-day trial in the Federal Court, Brisbane, commencing 28 October 2002.

Collagen Aesthetics Australia Pty Ltd

Alleged misleading or deceptive conduct (s. 52), false representations about the composition of goods (s. 53(a)), misrepresentations about the performance characteristics of goods (s. 53(c))

On 17 May 2002 the Commission instituted proceedings in the Federal Court, Adelaide, against Collagen Aesthetics Australia Pty Ltd, a company that supplies various collagen and hylaform products which are inserted into the skin for the purpose of reducing wrinkles and/or filling lips.

The Commission alleges that Collagen Aesthetics made false and misleading representations in various magazines about its collagen and hylaform products. These advertisements appeared in numerous magazines including *Vogue Australia*, *She* and *Marie Claire* and contained representations to the effect that:

- because Collagen Aesthetics' products are registered on the Australian Register of Therapeutic Goods, they are safer to use than its competitor's products which are merely listed
- the collagen and hylaform products are safe
- treatment with the collagen products is painless
- the collagen products are natural
- three types of hylaform products are available to be supplied to the public.

The Commission alleges that the representations are misleading and deceptive because:

- Collagen Aesthetics' products are not safer than its competitor's products merely because they are registered on the ARTG
- the application of the collagen and hylaform products has caused adverse health reactions in some people and accordingly, is not necessarily safe
- treatment with the collagen products is not necessarily painless, even with the use of an anaesthetic
- the collagen products contain a synthetically derived anaesthetic and, accordingly, cannot be considered to be natural
- only one type of the hylaform products was available to be supplied to the public at the time the advertisements were printed.

The Commission is seeking court orders including:

- declarations
- corrective advertisements
- injunctions
- trade practices compliance training
- costs.

A directions hearing was held on 24 June 2002 during which the respondent advised that it intended to seek to have this matter referred to mediation. The respondent has since filed its submission relating to mediation, which the Commission has opposed. The mediation issue was considered by Cooper J in the Federal Court, Adelaide, on 20 August 2002.

Fire Fighting Enterprises

Misleading or deceptive conduct (s. 52), misrepresentation that services are of a particular standard, quality, value or grade (s. 53(aa)), accepting payment without intending or being able to supply (s. 58)

On 20 May 2002 Spender J of the Federal Court ordered three-year injunctions preventing Fire Fighting Enterprises from making certain representations about its services and from entering into any agreements to provide services without the capacity to supply those services as contracted. FFE has also provided court enforceable undertakings to the Commission requiring it to:

- write to customers identified as not having received contracted services and offer compensation
- place advertisements in *The Courier Mail* to alert previous customers to potentially missed services
- conduct an internal review to identify the causes of the subject contraventions of the Act
- upgrade its trade practices compliance program.

This is the fourth part of a Commission investigation into the fire protection industry in south-east Queensland. Various fire protection companies, including FFE were found to have failed to perform routine inspection, testing and maintenance of fire protection systems to the relevant Australian standards between 1990 and 2001.

The Commission pointed out that the Australian standards require regular inspection, testing and

maintenance routines for fire sprinkler, alarm and hydrant systems, are critical for their reliability and performance and that conduct of this type could endanger lives and property.

The Commission had alleged that from at least 1990 until about September 2001 FFE did not always carry out the fire alarm testing routines or the sprinkler routines it had contracted to perform. FFE also had not implemented an adequate system of verification to check whether routines were due or had been performed. FFE's management was aware that it did not have an adequate verification system and that work had not been carried out, yet continued to renew its existing contracts and enter into new ones.

FFE also issued certificates of maintenance to building owners without knowing whether such routines had been performed. FFE admitted the conduct and cooperated with the Commission to rectify the concerns.

Universal Sports Challenge Limited

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(e)), offering gifts or prizes with the intention of not providing them (s. 54), accepting payment without intending or being able to supply as ordered (s. 58)

On 31 May 2002 Universal Sports Challenge Limited (USCL), the promoter of the Shark Challenge 2000 Golfing Competition, settled a legal action brought against it by the Commission.

The Commission instituted legal proceedings on 8 April 2002 against USCL. It alleged that USCL offered consumers an opportunity to compete in a golfing final to be held in Australia (the national final) and for those who qualified in the top half of that final a further opportunity. They would compete in a second final to be held overseas (the international final), but the Commission alleged USCL had no intention of providing an international one.

In fact, the international final was not held at an overseas destination, but rather at Pelican Waters, Caloundra, Queensland, on the weekend of 27–28 January 2001.

The Commission also instituted legal proceedings against Mr Michael Kotowicz, the chief executive officer of USCL at the time, for allegedly being knowingly concerned in USCL's conduct. The Commission's legal proceedings continue against Mr Michael Kotowicz, who is defending the case.

The competition was publicised throughout 2000 on the <http://www.sharkchallenge.com.au> Internet site, in national newspapers, radio, and in printed materials available through golfing clubs at golf courses, from golfing shops and newsagencies. Competitors entering the competition paid a membership fee of $55. After the Commission's investigation started USCL provided refunds of the $55 membership fee to about 3720 competitors, totalling $204 600, so it became unnecessary for the Commission to seek refunds from the court.

On 31 May 2002 USCL consented to the following orders before the Federal court:

- declaration that USCL, in breach of s. 52 of the Trade Practices Act, engaged in misleading and deceptive conduct by representing that a second final at an overseas destination would be awarded to successful participants of the competition when no such prize was awarded
- declaration that USCL breached s. 54 of the Act, as it had the intention of not providing or of not providing as offered, a second final at an overseas destination
- an injunction restraining USCL offering gifts, prizes or other free items, in relation to the promotion of sporting events, with the intention of not providing such gifts, prizes or other free items or from engaging in similar misleading conduct in the future
- an order requiring USCL to send a corrective letter to affected consumers.

Universal Sports Challenge Limited and Michael Kotowicz

Alleged misleading or deceptive conduct (s. 52), offering of gifts, prizes or free items in connection with the promotion or supply of goods or services, with the intention of not providing such gifts, prizes or free items, or of not providing them as offered (s. 54)

Proceedings instituted on 8 April 2002 against Universal Sports Challenge Limited (USCL) for alleged misleading and deceptive conduct in relation to the promotion of the Shark Challenge 2000 Golfing Competition and against Mr Michael Kotowicz, the Chief Executive Officer of USCL at the time, for allegedly being knowingly concerned in USCL's conduct. It was alleged that USCL offered consumers an opportunity to compete in a golfing final to be held in Australia (the National Final) and for those who qualified in the top half of

that final, an opportunity to compete in a second final to be held overseas (the International Final), when it had no intention of providing for an International Final. In fact, the International Final was not held at an overseas destination, but rather at Pelican Waters, Caloundra, Queensland, Australia on the weekend of 27–28 January 2001.

After the Commission's investigation started USCL provided refunds of the $55 membership fee to about 3720 competitors, totalling $204 600, so it became unnecessary for the Commission to seek refunds from the court. On 31 May 2002 USCL consented to orders before the Federal Court (see above).

Legal proceedings continue against Mr Michael Kotowicz with a directions hearing being held on 31 May 2002. Mr Kotowicz filed his defence on 14 June 2002, a directions hearing was held on 26 July 2002 at which a second directions hearing was set down for 13 September 2002 if required by the parties. Otherwise proceedings are set down for hearing on 23–25 September 2002.

Internet TV Australia Pty Ltd t/a Free2aiR

Alleged misleading or deceptive conduct (s. 52), false or misleading representations about the price of goods and services (s. 53(e)), false or misleading representations (s. 53(g)), harassment and coercion (s. 60), unconscionable conduct (s. 51AB)

On 17 May 2002 the Commission instituted proceedings in the Federal Court against Internet TV Australia Pty Ltd trading as Free2aiR and its Director, Mr James Young.

The Commission alleges that Free2aiR represented to consumers that:

- the Internet access services supplied by it included free Internet access time
- there was a one-off 'set-up' fee for subscribing to the Internet access services supplied by it
- there were no ongoing fees and charges payable for the Internet access services supplied by it other than a charge for any downloads above a specified amount each month.

The Commission alleges that the Internet access services supplied by Free2aiR were subject to terms and conditions that were not brought to the attention of potential customers before they subscribed. These included a condition that purported to allow Free2aiR, at its discretion, to charge customers a quarterly administration fee in addition to the set-up fee. It is alleged that some consumers subsequently received 'quarterly administration' invoices demanding further payment for their Internet services and threatening to disconnect them if they did not pay.

The Commission further alleges that Free2aiR engaged in unconscionable conduct in breach of the Act in its dealings with customers. It is alleged that this included: threatening to disconnect customers if they contacted Free2aiR by telephone to query the imposition of the administration fee; and the deduction of administration fees from the credit cards of customers without express authority to do so. The Commission also alleges that Free2aiR used undue harassment and coercion in breach of s. 60 of the Act by, in the circumstances, threatening to disconnect customers who failed to pay administration fees and advising customers that outstanding administration fees would be referred to a debt collection agency for recovery. This could result in additional costs to the customer and damage to their credit rating.

It is alleged that the sole director of Free2aiR, Mr James Young, was knowingly concerned in each of the alleged breaches, or aided, abetted and procured each of them.

The Commission is seeking court orders including:

- declarations
- injunctions, including an injunction restraining Free2aiR from collecting further administration fees
- refunds of quarterly administration fees paid
- the establishment of a trade practices compliance program
- costs
- other orders.

Guardian Finance and Insurance Consultants Pty Ltd

Referral selling (s. 57), pyramid selling (s. 61)

On 11 June 2002 the Commission obtained final orders in the Federal Court, Brisbane, restraining Guardian Finance and Insurance Consultants Pty Ltd and its sole director, Mr Peter Martin James (also known as Peter St James) from promoting Guardian's Reducible Home Loans Introducers program and Rate Reward program to consumers.

Proceedings were instituted on 5 April 2001 with the Commission alleging that the programs constituted illegal referral and pyramid selling schemes and their promotion by Guardian and Mr Peter Martin James contravened provisions of the Trade Practices Act.

The Commission also alleged Guardian's promotion of the scheme induced or attempted to induce consumers to enter into home loans through it and participate in the Guardian Reducible Home Loan Introducers program and Rate Reward program by representations that participating consumers would receive:

- a 0.1 per cent reduction in their interest rate for each customer they successfully referred to Guardian
- various benefits from Guardian for each customer successfully referred thereafter.

Guardian Finance and Insurance Consultants Pty Ltd and Mr Peter Martin James consented to orders from the Federal Court, Brisbane, which:

- declared that Guardian had breached ss. 61 and 57 of the Trade Practices Act in promoting its Guardian Reducible Home Loan Introducers program and Rate Reward program
- declared that Mr Peter Martin James was knowingly concerned in the contravening conduct
- granted injunctions preventing Guardian and Mr Peter Martin James engaging in future contraventions
- ordered Guardian and Mr Peter Martin James to implement a trade practices compliance program
- ordered Guardian and Mr Peter Martin James to refund application fees paid by participants in the illegal scheme
- ordered Guardian and Mr Peter Martin James to contribute to the Commission's legal costs.

Black on White Pty Limited t/a Australian Early Childhood College

Unconscionable conduct (s. 51AB), misleading or deceptive conduct (s. 52)

On 12 June 2002 the Federal Court ordered that monetary compensation, including interest be paid to victims of misleading and unconscionable conduct by Black on White Pty Limited trading as the Australian Early Childhood College.

The court made findings and declarations in April 2001 that the company had breached the Trade Practices Act by engaging in misleading and deceptive conduct, and unconscionable conduct towards students enrolled in its child care and related training courses (see enforcement chapter of *ACCC Journal* no. 33).

Spender J of the Federal Court also found that Mr James Poteri was knowingly concerned in misleading and unconscionable conduct, and that his son, Mr Nicholas Poteri, was knowingly concerned in the company's contraventions about accreditation of the college's courses.

Spender J ordered on 22 November 2001 that Mr James Poteri compensate some people after representative action was taken by the Commission.

The Commission had also sought orders that Mr James Poteri and Mr Nicholas Poteri compensate individuals who suffered loss because of the company's accreditation representations.

On 12 June 2002 Spender J ordered that compensation be paid to those individuals.

The Commission's case had focussed on various allegations including the company's failure to disclose a key clause about enrollees' right to cancel their enrolment. The action the company took to enforce that clause caused great financial hardship and stress for many of the victims in the Commission's proceedings.

Student applicants were also led to believe that by paying a deposit and filling in an application form they could secure a place with the college but could cancel the application by notifying the college in writing. They were not told that they could not cancel their enrolment less than 60 days before the starting date of the preferred course. Some applicants were told that the most they may lose would be their deposit or that they would have to pay a small administration fee. Many were awaiting examination results to determine whether they would be accepted by universities or other institutions that offered courses in childcare and related fields. Many were applying to a number of institutions to secure their educational futures.

The company asserted that these enrollees were bound to pay the full tuition fee regardless of whether the course was undertaken or not. For some the liability for the tuition fee was more than $9000. Student victims and some parents were served with a plaint and summons for recovery of unpaid fees and incurred additional loss, paying

lawyers to defend the action. One victim needed a bank loan to defend the action.

Other victims to benefit from the Commission's action were from predominantly non-English speaking backgrounds and had a limited understanding of contractual matters.

Some were told they would qualify for a deferred payment plan (that would operate like HECS) which would be introduced by the college shortly after they began their courses. The company did not provide the promised deferred payment plan and after initially permitting some enrollees to pay by instalment, demanded that they pay the balance of the outstanding tuition fees.

One victim enrolled to undertake a course at the college's Sydney Campus. She moved from New Zealand to attend the course and was told when she arrived in Sydney that the course had been cancelled. The college refused to refund the tuition fee.

The Commission commented that:

> The non-disclosure of key clauses in contracts or the onerous nature of those clauses may leave business at risk of contravening the Act. It is certainly unacceptable for business to simply say that once a contract is signed, the consumer loses legitimate rights of cancellation. That is especially the case if the business is dealing with young and inexperienced consumers.

Custom Security Services Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations as to price (s. 53(e)), a buyer's need for goods or services (s. 53(f)), false or misleading representations as to rights (s. 53(g)), assertion of right to payment for unsolicited goods or services (s. 64)

On 18 June 2002 the Canberra-based firm, Custom Security Services, provided court-enforceable undertakings offering refunds and full disclosure to some of its customers after a Commission investigation.

Numerous complaints were made to the Commission and the ACT Office of Fair Trading by CSS customers who were charged for security system upgrades that were undertaken without consultation in early 2001. In most cases customers became aware of the upgrade only when they received an invoice for $99.

While CSS subsequently sent letters to its customers explaining the upgrade, the letters failed to disclose the full cost of the upgrade. The modifications to security systems, which started in March 2001, provided an arming and disarming reporting capacity that needed to be tested daily and resulted in significant increases to telephone charges for security system monitoring. CSS's attempts to explain the upgrade to its customers also contained representations that the Commission alleged were misleading. In particular, CSS stated that the changes were 'necessary upgrades' because of an Australian standard and suggested that customers risked having insurance claims denied. The Commission was concerned about:

- the failure to disclose the non-mandatory nature of the relevant Australian Standard
- misleading statements about the need for the upgrade
- the implication that customers may have been misled about their rights to make insurance claims.

CSS has acknowledged that its failure to properly inform customers before the upgrade was in breach of the Trade Practices Act. As part of the court-enforceable undertakings, CSS has agreed to:

- immediately cease making demands for payment for security system upgrades
- write to customers (whose security system did not previously have facilities for opening and closing reports) offering refunds of the $99 upgrade fee and increased telephone charges
- fully disclose relevant information to enable customers to make an informed choice
- implement a trade practices compliance program.

Wesfil Australia Pty Ltd

Alleged misleading or deceptive conduct (s. 52), misleading and deceptive conduct in relation to country of origin labelling, misrepresentation (s. 53(eb)) in relation to place of origin

On 11 July 2002 the Commission instituted proceedings in the Federal Court, Perth, against Wesfil Australia Pty Ltd, alleging it engaged in misleading and deceptive conduct in relation to the country of origin labelling of automotive air filters by the company.

The Commission alleges that during the period from June 1999 until about May 2002 Wesfil imported and distributed a number of automotive air filters that were made in Thailand and which Wesfil re-labelled as 'Made in Australia'.

The court documents filed by the Commission seek remedies including:

- declarations that Wesfil has breached ss. 52 and 53(eb) of the Act
- injunctions restraining Wesfil from misleading the public about the place of origin of its products
- orders for publication of a corrective notice by Wesfil in major newspapers and trade magazines in Australia
- orders to ensure all Wesfil's current wholesale and retail stocks are correctly place of origin labelled
- orders for Wesfil to refund consumers who have proof of purchase and who can demonstrate they were misled by Wesfil's country of origin claims
- the implementation of a corporate Trade Practices Act compliance program by Wesfil
- the Commission's court costs.

Product safety (Part V)

Dictomax Pty Ltd

Misleading or deceptive conduct (s. 52), misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services (s. 53(a)), misrepresentations about the performance characteristics of goods (s. 53(c)), product safety standards and unsafe goods (s. 65C)

On 28 May 2002 O'Loughlin J in the Federal Court, Darwin, granted injunctions against Dictomax Pty Ltd, the manufacturer of the 3 in 1 Jackramp, preventing it from supplying portable car ramps that fail to comply with the mandatory consumer product safety standard. The court also ordered that Dictomax pay the Commission's court costs.

The orders follow on from ones obtained on 30 April 2002 against Autobarn Pty Ltd and Northern Accessories Pty Ltd (Autobarn Darwin) in relation to the 3 in 1 Jackramp.

The Commission commented:

> Testing showed that the product was not strong enough and it was too narrow for its height. The Jackramp buckled when tested with the minimum weight required under the mandatory product safety standard.
>
> ... one Dictomax promotional photograph depicted a child sitting under a four wheel drive vehicle elevated on a Jackramp.
>
> The manufacturer advertised and promoted the Jackramp in its promotional material and packaging as being Australian Standards Approved when in fact it was not.

The Federal Court made declarations that:

- Dictomax engaged in misleading or deceptive conduct in representing that the Jackramp complied with the mandatory consumer product safety standard namely AS/NZS 2640:1994, when it did not
- Dictomax made a false representation that the Jackramp was of a particular standard
- Dictomax supplied the Jackramp which did not comply with the mandatory consumer product safety standard namely AS/NZS 2640:1994.