
International developments

From the UK

The following items come from the Office of Fair Trading's website <<http://www.oft.gov.uk>> and its magazine, *Fairtrading*.

Hasbro fined £4.95 million for price fixing for toys

The OFT recently fined toy manufacturer Hasbro £4.95 million for price fixing.

Agreements between Hasbro and 10 distributors prevented the distributors from selling Hasbro toys and games below Hasbro's list price without permission.

Hasbro's penalty—the largest so far under the Competition Act—was reduced under the OFT's leniency program by 45 per cent. Without this reduction the fine would have been £9 million. Hasbro was granted leniency because it asked for it at an early stage of the investigation and cooperated fully.

The distributors were not fined because the OFT found that the initiative to impose the prices was Hasbro's and the distributors had no choice but to accept them.

OFT concludes B SkyB investigation

British Sky Broadcasting (BSkyB) has a dominant market position but has not been found in breach of competition law, the OFT has concluded.

After complaints from rival pay TV distributors, the OFT investigated whether B SkyB's conduct amounted to an abuse of a dominant position.

The core question was whether B SkyB had exerted an anti-competitive 'margin squeeze' against its pay TV rivals by setting its wholesale prices for premium channels at a level that would make other distributors with the same efficiency as B SkyB run at a loss.

For the period examined the margin squeeze test showed a temporary and relatively small loss followed by a return to profit. This borderline finding did not provide sufficient grounds to conclude that competition law was broken.

From the US

The following items come from the Federal Trade Commission's press releases on its website <<http://www.ftc.gov>> and from *Antitrust & Trade Regulation*, published by the Bureau of National Affairs, Inc.

Pain relief infomercial leads Blue Stuff to pay FTC US\$3 million

Blue Stuff Inc., McClung Advertising, Inc., and their president, Jack McClung, have agreed to pay US\$3 million to settle FTC charges that they made unsubstantiated claims that Blue Stuff and Super Blue Stuff topical creams will relieve severe pain. The defendants from Oklahoma City made the unsubstantiated severe pain relief claims for the two products in television infomercials disseminated nationwide and on their Blue Stuff website. In addition to paying redress, the defendants must in future possess competent and reliable scientific evidence to support future claims about the health benefits, performance, safety, efficacy, or side effects of any dietary supplement, food, drug, cosmetic or device.

Marketers of purported breast enhancement system settle charges

The FTC recently announced a settlement with a California-based company that marketed a so-called breast enhancement product, the Isis system. According to the FTC complaint, the defendants deceptively represented that Isis would increase a woman's breast size safely with no negative side effects. The consent order requires that defendants possess competent and reliable scientific evidence

before making the types of claims challenged in the complaint.

As well as a lack of evidence for the numerous efficacy claims for Isis the complaint further alleges that the defendants' claims that Isis had no reported side effects was false. The defendants had received hundreds of complaints about side effects including headache, nausea and allergic reactions. The FTC also alleged that the defendants falsely claimed dissatisfied consumers could easily obtain full refunds.

The settlement orders three individual defendants to pay US\$16 667 each in redress based upon the defendants' financial condition. However, if the court finds they misrepresented their finances they will have to pay the full amount of consumer redress of US\$22 million.

Court stops Miss Cleo promoters from collecting about US\$500 million owed by consumers

In a recent landmark settlement with the FTC, Access Resource Services Inc. and Psychic Readers Network Inc. agreed to a stipulated court order stopping all collection efforts on accounts or claims from consumers who purchased or purportedly purchased their pay-per-call or audiotext services. The companies are forgiving an estimated US\$500 million in outstanding consumer charges. The Florida-based companies and their officers operated a massive 900 number scheme known to the public as the Miss Cleo psychic lines. The FTC alleged that the defendants engaged in deceptive advertising, billing and collection practices. The settlement also requires the defendants to pay US\$5 million to the FTC.

J Howard Beales III, Director of the FTC's Bureau of Consumer Protection, said:

I'm no psychic, but I can foresee this: If you make deceptive claims, there is an FTC action in your future.

The complaint alleged that the defendants misrepresented that consumers:

- would receive psychic reading at no charge
- did not incur costs when they remained on the telephone with the psychic readers
- were obligated to pay charges for calls made to the defendants' audiotext numbers.

Investment seminar promoter settles FTC charges

Seminar promoter, Wade Cook, recently agreed to settle FTC charges that he and his companies violated the terms of a federal district court order barring unsubstantiated earnings claims at financial seminars and requiring rate of return disclosures and redress payments. The settlement will extend a program to provide redress for investors who paid to attend Cook's clinics, but did not make more money trading stocks than they paid for the seminars. It also will put systems in place to assure compliance with the requirement that Cook disclose the rate of return on stock market investments made by the Wade Cook Financial Corp (WCFC).

The FTC charged that WCFC used deceptive earnings claims to lure consumers into paying between US\$3000 and US\$5000 to attend a three-day seminar titled the Wall Street Workshop. It alleged that WCFC misrepresented how much money Cook and his workshop instructors earned by investing, used misleading testimonials in promotional materials; and failed to disclose the actual rates of return earned by WCFC. The settlement barred unsubstantiated earnings claims, required that promotional materials and claims provide accurate information about WCFC's trading record, and required redress for some consumers who signed up for the seminars.

From Canada

The following item is from the Competition Bureau's website at <<http://competition.ic.gc.ca>>.

Abtronic muscle stimulators removed from market by Competition Bureau

Canadian consumers will no longer be subjected to false claims of weight loss and muscle toning, inducing them to purchase the Abtronic and Abtronic Pro, two electronic muscle stimulation devices, from Thane Direct Canada Inc. As part of a consent agreement registered with the Competition Tribunal, Thane has agreed to refund consumers the full value of the devices.

Thane sold these two devices via television Infomercials and their website for approximately \$120 each to hundreds of thousands of Canadians, giving the false impression that without performing any physical exercise, a person could lose weight, obtain an athletic physique with well-defined

abdominal muscles, replace the workout benefits of a fully equipped gymnasium and increase their strength.

Investigation of international price fixing conspiracy leads to Can\$100 000 fine

The Competition Bureau's international investigation in the food preservatives industry has concluded with the conviction of Japan-based Nippon Gohsei Industries, Ltd which pleaded guilty to charges of price fixing and market sharing. The company was sentenced to pay a Can\$100 000 fine for its part in the conspiracy.

The Bureau's investigation, which started in 1998, revealed that Nippon was involved in a conspiracy to fix prices for sorbic acid and potassium sorbate, otherwise known as sorbates. Sorbates are primarily used as mould inhibitors in foods such as dairy products, bakery products, flavours and spices, syrups and other processed foods commonly sold in grocery stores.

Nippon is the fifth international company to be convicted of such offences in Canada over the past three years. Ueno Fine Chemicals, of Japan, Daicel Chemical Industries, Ltd, of Japan, Hoechst AG, of Germany, and Eastman Chemical Company, of the United States, were all previously convicted of price fixing and volume allocation. Former senior executives of some of these companies were also convicted for their role in the same conspiracy. The fines levied from these convictions totalled Can\$7.49 million.

From New Zealand

The following items came from the NZ Commerce Commission's media releases listed on its website at <<http://www.comcom.govt.nz>>.

Warning to wine industry—Commission takes fair trading breaches seriously

Brendon Thomas Meo, owner and director of Solstar Limited, has admitted breaching the Fair Trading Act in relation to misleading representations as to the place of origin of his wine.

A settlement was recently reached between the Commerce Commission and a company director, Brendon Thomas Meo, who had misrepresented the place of origin of grapes used in wine made at

Solstone winery. The representations stopped after Meo sold the winery.

Meo sold wine under the Solstone 'Gisborne' Chardonnay label when it was in fact produced from grapes from the Marlborough region, and did not contain any grapes from Gisborne.

In addition, wine sold under the Solstone Estate Chardonnay label was also produced from grapes from the Marlborough region, and did not contain any grapes grown on the estate near Masterton.

The Commerce Commission commented that:

... wineries need to ensure their labelling is accurate—not only regarding place of origin, but also in relation to varietal, vintage, and general representations made about their wine, especially in an environment in which regions and boutique wineries are developing their own character and branding.

From Europe

Eight firms fined for concrete reinforcing bar cartel in Italy

The European Commission recently imposed fines totalling more than EURO85 million on eight Italian firms for having organised, between 1989 and 2000, a cartel in the market for concrete reinforcing bars, a product used in the construction industry.

After a detailed investigation during which it carried out on-the-spot inspections in 2000, the Commission found that eight firms took part, with the aid of the Italian trade association Federacciai, in an agreement aimed at fixing the prices of reinforcing bar in bars or coils in Italy.

Reinforcing bars are a long steel product, usually with a ribbed surface, for strengthening columns and other concrete structures in buildings.

The firms accounted for around 30 per cent of reinforcing bar produced in Italy in 1989 and more than 80 per cent in 2000, the number of market players having fallen from some 40 to less than a dozen.

National cartels are not normally investigated by the Commission, but the relevant product is covered by the Treaty establishing the European Coal and Steel Community and the Commission therefore has exclusive competence.

Directors now recognised as authors of films

All EU member states now recognise the principal director of a film or audiovisual work as an author of the work and accord him or her the associated intellectual property rights, in line with the 1992 Directive on the Rental and Lending Right and Certain Related Rights. This has not made it more difficult to distribute and market audiovisual works, despite fears expressed by some member states when the directive was adopted. Those are the main conclusions of a report issued by the European Commission. The objective of the relevant provision in the directive was to ensure copyright for the principal director as the main creator of a film. Member states remain free to use national law to designate other co-authors.

The authorship of films

The definition of the author of creative work is in most cases not harmonised by EU law. In the cinematographic and audiovisual sector, it is particularly difficult to define who is the main author among the large group of people involved in the making of the work (such as screenplay writers, composers of the film music and directors). However, given the key creative role of the director, he or she should be regarded as one of the authors. If the internal market is to work properly in the audiovisual sector, that intellectual property protection must apply throughout the EU.