

New law for 'Made in Australia' claims

Misleading or confusing claims about the country of origin of goods have long been a problem for consumers and for businesses.

Changes have been made to the Trade Practices Act to clear up the confusion by setting defences which must be met to justify origin claims.

Although these defences apply to all such claims, they were introduced mainly to establish ground rules for the use of terms like 'Made in Australia' and 'Product of Australia'.

The defences apply to any statement, claim or implication about which country goods come from — for example on labelling, packaging, advertising or by way of a logo.

Sellers making promotional country of origin claims which don't meet the new defences run the risk of legal action.

The Commission's soon to be released news for business sheet **Country of origin claims** gives a little more detail. The Commission plans to release a guide to **Country of origin claims and the Trade Practices Act** before Christmas. Both will be available free from all ACCC offices or on its website.

The defences

'Made in ...'

Two tests must be met for general country of origin claims such as Made in Australia, Australian Made or Manufactured in Australia:

- the goods must have been substantially transformed in the claimed country of origin; and
- 50 per cent or more of the costs of production must have been carried out in that country.

The new law defines substantial transformation as 'a fundamental change ... in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change'.

This means that simple treatments or processing — such as repackaging or mere assembly — are unlikely to allow for use of 'Made in Australia' on an otherwise imported product.

In calculating the cost of production or manufacture of goods three broad categories are considered: expenditure on materials, labour and overheads.

Materials costs are generally straightforward to calculate and can be allocated to the final goods fairly easily. But labour and overheads count towards costs of production only where they can reasonably be allocated to the final goods.

'Product of ...'

This defence is very strict. To qualify two rigorous criteria must be met:

- each significant component (or ingredient) of the good must originate from; and
- all, or virtually all, of the production processes must take place in

the country of the claim.

These criteria apply to any variations of the words 'product of', such as 'produce of' and 'produced in'.

Logos

Logos are frequently used to promote goods to build brand recognition, or to associate the goods with desirable characteristics which may include their origin.

The new law allows for country of origin logos to be prescribed by regulation. A prescribed logo will signify that over 50 per cent of production occurred in a given country.

Disregarding the defences

The legal position for claims that don't meet the new defences remains unchanged.

This may include the use of qualified claims or terms that imply a lesser connection with the country, such as 'Built in ...' or 'Assembled in ...'.

These will be assessed on their merits and will run the risk of legal action by the Commission, or a competitor or any other interested party.

Removal of uncertainty is just as important for consumers who want particular imported goods.

