

# Refunds and compensation for consumers

Refunds and compensation for consumers have figured large in ACCC court cases over recent months: two that concerned misleading advertising and two that involved exploitation of people's gullibility.

The judgments were a pleasing end result that reflected the ACCC's commitment to getting redress for people who might otherwise be without recourse to the justice system — in these cases by taking action on their behalf.

## Get thin/rich quick

In the first case against the Swiss Slimming and Health Institute the ACCC's action was on behalf of more than 500 former institute clients who had been enticed to join the program through hard-sell tactics which played on insecurities about their weight.

The court ordered \$1 327 657 in compensation and \$142 677.66 in interest to be paid.

The program involved being wrapped in cold bandages and being told there was no need to worry about dieting. However, there was a detoxification program which, as the judge said,

... makes it sound even more horrible than calling it a diet, and they are told to eat fruit and vegetables for a week. Now, there is no real surprise if during that they lose some weight.

In the Golden Sphere pyramid scheme case the principals were ordered to refund \$550 000 to consumers who suffered financial loss through participating in the scheme.

The respondents argued that the ACCC had no standing to bring the representative proceedings because its interests were different to the interests of the consumers who took part in the scheme.

The judge rejected this saying the fact that the ACCC was acting in the public interest for the protection of consumers whilst the members of the group were pursuing their private interests was not a disqualifying feature.

Pyramid selling typically involves a scheme that people pay money into for the opportunity to join and then recruit others. In effect a chain is created that reaps the initial promoters significant profits but leaves those who join later more than likely out of pocket and often in debt as the market quickly becomes saturated.

## Misleading advertising

Yakka Pty Limited stepped into the Commission's spotlight with its **Let's Work** national promotion which ran between November '97 and January '98 and which affected a lot of rural Australians and small businesses — both priority groups for the Commission.

The promotion promised \$300 worth of Yakka clothes to Holden Rodeo buyers. The problem was that buyers were given redeemable points, not cash, and there was a discrepancy between point values and clothing values which resulted in buyers only getting between \$200 to \$250 worth of clothing.

The Commission alleged the promotion was misleading as the points assigned were based on notional or expected prices, not recommended retail prices.

Yakka acknowledged it was responsible for the pricing problem and offered court enforceable undertakings to make good the difference in value to the 1800 Rodeo buyers affected.

In the fourth case the ACCC negotiated a \$2000 compensation payment by Nissan Motor Co. (Australia) Pty Ltd to each of 17 customers who had bought Patrol RX Turbo Diesels as a result of newspaper and television advertisements in late 1996 which misrepresented the vehicle's model and price.

Nissan pleaded guilty and agreed to enter into enforceable undertakings.

Adelaide advertising agent, Thomas Wightman, pleaded guilty to having aided and abetted Nissan in some of the conduct.

It was the first time the ACCC had also prosecuted the advertising agent involved.