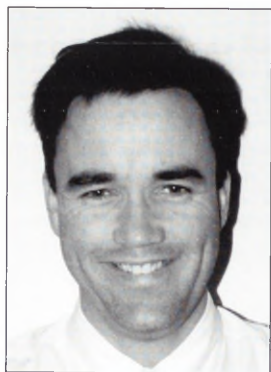


# Small fry v large fry:

BY SIMON MORRISON, BRISBANE  
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## Hurley v McDonald's Australia Limited

Photos by Bill Madden.



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**O**n 2 July 1999, representative proceedings were issued in The Federal Court of Australia, in Brisbane, by Shine Roche McGowan on behalf of 6000 Australians who participated in the McDonald's McMatch and Win Monopoly Promotion, and had entries rejected on the ground that the game stamps submitted were not issued by McDonald's as part of the 1999 competition.

On the one hand, each of the class members assert that the stamps were handed to them through McDonald's restaurants as part of this year's competition, while on the other hand, McDonald's publicly claimed that it was not possible that this could have occurred, having regard to

McDonald's systems.

The promotion called "McMatch and Win" involves customers combining sets from monopoly properties to win prizes in the form of motor vehicles, holidays, computers, etc. For example, the combination of the Park Lane and Mayfair sets may entitle the claimant to a Honda HRV motor vehicle, valued at \$29,000. In the litigation so far, there have been 1100 claims for the Honda motor vehicle.

The matter was listed before his Honour Justice Dowsett on 9 July 1999 for directions, at which time His Honour set the matter down for hearing to commence on 4 October 1999.

An extremely tight directions timetable was set for completion of interlocutory steps during the 3 months prior to the hearing commencing.

The first stage of the hearing concluded on 29 October 1999, with some 70 witnesses giving evidence. Evidence was heard from 35 test claimants and corroborative witnesses, together with evidence from various suppliers and

manufacturers.

One interlocutory judgment handed down in the trial is already on appeal, to be heard, pending leave, on 18 November 1999, in the Full Court.

Of some interest to the media was the apparent disappearance of some trial exhibits during the first stage of the hearing. It was reported that the cleaners may have mistaken the exhibits (sample drink cups and fry cartons), for somebody's lunch and threw them away accordingly. I have it on good authority that when approached, the cleaners refused to comment!

The trial will resume on 21 February 2000 at which time evidence will be heard from some 170 McDonald's store witnesses.

The claims are for alleged breaches of a contract together with alleged breaches of *The Trade Practices Act*. A successful result in contract could see the value of the claim run into tens of



millions of dollars.

The claim has been labelled in some quarters as one of the more significant consumer actions to be litigated in this country for some time.

Significant media attention has been paid to the litigation since the trial commenced. The matter attracted considerable attention when the issue broke in July, but quietened when, after engaging retired judge Trevor Morling, McDonald's released his report publicly, which appeared to suggest that McDonald's had not erred in rejecting the entries on the basis that they communicated

to customers. Mr Morling's report has been ruled 'irrelevant' by Justice Dowsett, for the purposes of the proceedings.

We will keep you posted next year of the developments in the trial. ■

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