

worldsportslawreport

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Carbon offsetting of motor racing: 'greenwashing'

V8 Supercars in Australia announced its Racing Green Program in 2007, claiming that planting 10,000 native trees would offset carbon emissions from the V8 Championship Series. Claude Harran, a Lawyer at Kelly Hazel, examines concerns raised by the Australian Competition and Consumer Commission (ACCC) that the claim was inaccurate and misleading under Section 52 of the Trade Practices Act (TPA).

'Greenwashing' is a term that has become the latest buzz word describing the 'act of misleading consumers regarding the environmental practices of a company or the environmental benefits of a product or service'¹. Outside of the current worldwide financial crisis, the next big topic is conservation of the environment. Increasingly, consumers are becoming more and more green conscious and swayed to purchase a product given its 'green credentials'. The Australian Competition and Consumer Commission (ACCC) - the Australian consumer watchdog - has as one of its many consumer protection objectives to ensure that environmental claims are accurate and do not mislead consumers into believing that a product has features beneficial to the environment when it does not. Environmental claims come in a variety of forms, 'including statements about environmental sustainability, recycling, energy and water efficiency or impact on animals and the natural environment'². Of particular significance are claims relating to being able to offset a consumer's carbon footprint through the carbon emissions reduction characteristics provided by a product.

Carbon claims and the Trade Practices Act
The Trade Practices Act (TPA) has, as two of its many objectives, the promotion of competition and fair-trading; and provision for consumer protection. The TPA has a wide reach and deals with a number of commercial relationships in which competition and consumer protection issues can arise, including in the case of carbon emission claims, suppliers, retailers and the consumer.

Of particular relevance in the area of carbon emission claims are the provisions relating to misleading and deceptive conduct or false and misleading representations in the TPA.

Misleading and deceptive conduct is covered in the TPA, Section 52³, and false and misleading representations in Section 53⁴. Accordingly, in response to the Federal Court of Australia's decision in *Australian Competition and Consumer Commission v GM Holden Ltd*⁵, the Chairman of the ACCC, Mr Graeme Samuel, provided the following warning to businesses making unsubstantiated carbon emission and green claims: 'Vague, unsubstantiated, misleading, false or deceptive environmental or green claims not only are at risk of breaching the Act but they also reduce consumer confidence in such claims and disadvantage ethical traders doing the right thing'. As such, 'Companies risk breaching the Trade Practices Act if they give an overall impression to consumers that their product is environmentally friendly when it isn't'⁶.

As a result of the ACCC concern in relation to the increase in environment claims, the ACCC has published:

- Green Marketing and the Trade Practices Act.
- Carbon Claims and the Trade

Practices Act.
● Environmental Issues. They all specifically deal with environmental claims⁷.

Carbon claims and the V8 Supercars
V8 Supercars Australia Pty Ltd (V8 Supercars) is responsible for expanding and promoting the racing of V8 motor cars in Australia. V8 Supercars is the organisation with responsibility for organising and conducting the V8 Supercars Championship Series.

In 2007, V8 Supercars introduced its Racing Green Program (Program). As part of this Program, V8 Supercars announced that it would plant 10,000 native trees to fully offset the carbon emissions from the V8 Championship Series, including emissions from the races themselves, transport of the racing teams, air travel to the events and other activities. V8 Supercars engaged an environmental expert to calculate how the carbon emissions of the 2007 V8 Supercars Championship Series could be offset. The expert calculated that 2,500 tonnes of carbon emissions would be produced by the V8 Supercars Championship Series. In order to offset its carbon footprint, the V8 Supercars would be required to plant 10,000 native trees around Australia. Relying upon this advice, V8 Supercars represented that the Program would entirely offset carbon emissions from the V8 Supercars Championship Series. Two further expert reviews were undertaken with the calculation of emissions increasing from 2,500 tonnes of carbon emissions per year to 3,700 and 6,200 respectively. The increase in the emissions was explained on the basis that the initial calculation did not take into account travel to and from overseas series races. In response, V8 Supercars changed

the coverage of its Program to exclude the overseas events.

The ACCC's concern in this case was that it considered that to claim that the planting of native trees to offset the carbon emissions of the V8 Supercar Championship Series was likely to mislead consumers and therefore contravene the misleading and deceptive conduct provisions of Section 52 of the TPA. The issue behind the ACCC's concern was that it felt that the claim suggested or implied that the trees would quickly absorb the carbon emissions, when in fact it is likely that it would take several decades for the trees to absorb the emissions from one year's racing.

"If businesses want to make claims that planting trees will offset carbon emissions, they must explain that this will only occur over the full life of the trees", ACCC Chairman, Mr Graeme Samuel, said. "Further, when seedlings are first planted the amount of carbon that they absorb is likely to be very small. It is not until the trees are fully grown that they can maximise carbon absorption"⁸.

In response to the ACCC's concerns, V8 Supercars has provided the ACCC with a court-enforceable undertaking that;

- any future green campaigns will be first considered by a Solicitor to ensure that they comply with the TPA;
- any claims relating to the planting of trees to offset carbon emissions will include an explanation about the time before those emissions will be offset; and
- an acknowledgement of the ACCC's concerns and the undertaking will be placed on its Program webpage⁹.

As a result of the ACCC's concerns relating to green marketing, the V8 Supercars undertaking is not an isolated example of the ACCC requesting

It would take several decades for the trees to absorb the emissions from one year's racing

that a company substantiate its green claims. The ACCC has recently been successful in a Federal Court action against GM Holden Ltd for claims made in respect to the green credentials and carbon offset claims of its Saab range of vehicles¹⁰.

GM Holden made representation that measures had been implemented that would allow carbon emissions from any Saab motor vehicle to be neutralised over the life of that motor vehicle. In addition, the advertisements represented that in the first year following the purchase of a Saab, GM Holden would plant 17 native trees which would have the result of offsetting the carbon emissions for the life of that motor vehicle.

Again, the ACCC was concerned that the green claims were misleading and deceptive and/or false representations. This view was based on the ACCC's opinion that the carbon emissions from any Saab would not be neutralised over the life of that motor vehicle, and that planting 17 native trees would only provide a carbon emission offset for a single year's operation of the motor vehicle.

Interestingly, by consent, the Federal Court declared that GM Holden contravened Sections 52 and 53(c) of the TPA.

The ACCC also accepted court enforceable undertakings from GM Holden so that it will;

- refrain from republishing the advertisements;
- retrain all its Saab marketing staff; and
- have the training reviewed by an independent third party and have the reviewer provide a report to the ACCC about the training.

In order to improve its green credentials, GM Holden went further and stated that it would plant 12,500 native trees, which it believes will be a sufficient number of trees to offset the carbon

emissions for the life of all of the Saab motor vehicles sold during the campaign¹¹.

As more and more emphasis is placed on becoming environmentally conscious, any claims by a sporting organisation that it is green or contributing to the environment should be carefully considered given the ACCC's concentration of environmental claims.

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1. <http://www.terrachoice.com/Home/Six%20Sins%20of%20Greenwashing>
2. Green Marketing and the Trade Practices Act - <http://www.accc.gov.au/content/index.phtml/itemId/815763>
3. Section 52 - Misleading and Deceptive Conduct - http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s52.html
4. Section 53 - False and misleading representations - http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s53.html
5. (ACN 006 893 232) [2008] FCA 1428
6. <http://www.accc.gov.au/content/index.phtml/itemId/843395>
7. Green Marketing and the Trade Practices Act - <http://www.accc.gov.au/content/index.phtml/itemId/815763>
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9. Environmental Issues - <http://www.accc.gov.au/content/index.phtml/itemId/833197>
10. <http://www.accc.gov.au/content/index.phtml/itemId/843360>
11. http://www.v8supercars.com.au/v8racinggreen/content/pdf/changes_to_the_v8_racing_green_program.pdf
<http://www.accc.gov.au/content/item.phtml?itemId=844138&nodeId=3a2639a08e2f67568008c472d402d36a&in=Undertaking.pdf>
10. Australian Competition and Consumer Commission v GM Holden Ltd (ACN 006 893 232) [2008] FCA 1428
11. <http://www.accc.gov.au/content/index.phtml/itemId/844645>



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