

Commercial Insights

Retailers beware of advertising false promotions

The ACCC recently successfully prosecuted eyewear retailer, Oscar Wylee in the Federal Court of Australia which resulted in Oscar Wylee being ordered to pay \$3.5m in penalties for misleading and deceptive conduct and making false and misleading representations about its charitable donations and affiliations in breach of the Australian Consumer Law.

Between January 2014 and December 2018, Oscar Wylee made statements in its social media posts, on its website and in promotional materials that for each pair of glasses a consumer purchased, it donated another pair of glasses to someone in need when in fact it did not do so.

The false marketing claims made by Oscar Wylee included claims that: *“For every pair purchased, a pair is donated to someone in need”* and: *“One for one. All the time. Forever. We donate a pair of glasses to those in need for every pair purchased”*. They also had a slogan: *“Buy a pair, give a pair”*.

The ACCC determined that during almost five years Oscar Wylee sold 328,010 pairs of glasses but donated only 3,181 frames to charity, without lenses, which is approximately one set of frames for every 100 pairs of glasses sold.

The ACCC alleged that Oscar Wylee promoted its charitable activities as a core reason why consumers should buy Oscar Wylee glasses. Its claims were false and were made in circumstances where consumers could not easily verify these claims for themselves.

Oscar Wylee also admitted to making false and misleading representations to consumers, that it was closely affiliated with the charitable organization Rose Charities. Those claims were found to be misleading as Oscar Wylee only made one single donation of \$2,000 and provided 100 frames to the charity. Those donations were made in 2014, yet Oscar Wylee continued to claim an affiliation with the charity until late 2018.

Justice Katzmann said: *“Oscar Wylee stood to profit from inducing consumers to purchase its products and still does. It built its reputation by engaging in the contravening conduct, appealing to socially conscience consumers who wanted to support charitable causes through their purchasing behaviour. Its conduct was a betrayal of that promise.”*

Lessons to be learned

It goes without saying that advertising and promotional activities by retailers and service providers alike must be accurate. If you continue to promote an association with a charity or promote the undertaking of a charitable activity, it is important that those activities are current and not historical.

The ACCC is being increasingly proactive in pursuing and prosecuting retailers and service providers for misleading and deceptive practices. The penalties for breaching the Australian Consumer Law can be significant, as they were in this case.

This article was written by Principal, Douglas Raftesath and Lawyer, Alexander Hughes. If you have any questions about Australian Consumer Law, please contact Douglas Raftesath.



Douglas Raftesath

Principal

+61 2 9018 9978

draftesath@meridianlawyers.com.au



Alexander Hughes

Lawyer

+61 2 9018 9956

ahughes@meridianlawyers.com.au

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