

## NEW ZEALAND



Erich Bachmann

Peter Woolley

Hesketh Henry

[erich.bachmann@heskethhenry.co.nz](mailto:erich.bachmann@heskethhenry.co.nz)

[peter.woolley@heskethhenry.co.nz](mailto:peter.woolley@heskethhenry.co.nz)

[www.heskethhenry.co.nz](http://www.heskethhenry.co.nz)

<b>1. Legislation</b>	
<b>Topic:</b>	Fair Trading Act Enforcement Powers
<b>Who:</b>	New Zealand Parliament
<b>When:</b>	July 2003
<b>Where:</b>	Wellington
<b>What happened:</b>	<p>The New Zealand Parliament has extended the Commerce Commission's enforcement powers to deal with misleading and unfair trading practices by businesses.</p> <p>The amendments to the Fair Trading Act double the maximum penalties for offences from \$30,000 to \$60,000 for individuals and \$100,000 to \$200,000 for companies. In the case of pyramid selling schemes the maximum penalty is the higher of \$200,000 for both individuals and companies or the value of any commercial gain derived from the scheme.</p> <p>The existing search powers of the Commission have been widened. The Commission has obtained new information gathering powers.</p> <p>The Commission no longer has to provide undertakings as to damages in cases where it seeks interim injunctions.</p> <p>The Commission now has a more effective power to require corrective advertising.</p>
<b>Comments:</b>	<p>The changes are intended to strengthen the Commission's investigation powers so that it will have more complete evidence when it prosecutes.</p> <p>It is hoped this will lead to higher penalties in cases of conviction.</p> <p>Consumer protection agencies say the changes are necessary for "unscrupulous traders" and businesses that have not been deterred from misleading or unfair trading practices.</p>

<b>2. Legislation</b>	
<b>Topic:</b>	Consumer Guarantees Act widened
<b>Who:</b>	New Zealand Parliament
<b>When:</b>	July 2003

<b>Where:</b>	Wellington
<b>What happened:</b>	<p>The Consumer Guarantees Act is the foundation of New Zealand's consumer laws providing rules to protect the rights and remedies for buyers of products and services that turn out to be defective. The law requires that goods must be of acceptable quality. Services must be performed with reasonable care and skill.</p> <p>When things go wrong the supplier or manufacturer has an opportunity to put things right except in serious cases when the consumer can choose to reject the goods or cancel the contract and get a refund. The legislation makes the supplier in the supply chain, who is best placed to manage the risk of product failure, liable to the end consumer for defects.</p> <p>The amendment to the Consumer Guarantees Act removes previous uncertainty and provides that the Act applies to electricity, gas, water and computer software. It also covers network supply functions for electricity, gas, telecommunications, water and waste water removal.</p>

<b>3. Regulation</b>	
<b>Topic:</b>	Unbundling of local loop to Commerce Commission
<b>When:</b>	September 2003
<b>Where:</b>	Wellington
<b>What happened:</b>	<p>The Commerce Commission has issued a draft decision concluding there would be substantial benefits if Telecom New Zealand (New Zealand's ubiquitous telecommunications provider) unbundles its local loop and fixed public data networks. The Commission sees unbundling as a means of allowing competitors to use parts of the network on a wholesale basis in order to build up a competitive offering of retail services.</p> <p>The local loop network is the copper wire network that links homes and businesses to the national telephone network. By obtaining access to Telecom's copper wire network, other carriers will be able to compete more vigorously with Telecom in delivering broadband and voice services to both residential and business users.</p> <p>The Commission's draft decision concludes that unbundling the public data network will encourage further competition in the supply of data transmission and other data services to businesses.</p> <p>The Commission is seeking submissions and will hold a public conference in October in preparation for its final recommendation to the Minister of Communications on this topic in December 2003.</p>

<b>4. Case Report</b>	
<b>Topic:</b>	News media - invasion of privacy
<b>Who:</b>	Court of Appeal
<b>When:</b>	September 2003
<b>Where:</b>	Wellington
<b>What happened:</b>	The appellant is a well known media personality who is attempting to prevent publication of his children's photograph by a wide circulation magazine. The photograph was taken in a shopping mall.

	The High Court decision which is being appealed questions whether there is a common law protection of an individual's privacy in New Zealand.
<b>Comments:</b>	It is expected that the Court of Appeal's decision will clarify whether there is common law right to individual privacy. News media organisations are particularly interested because generally the statutory protection of privacy given by the Privacy Act, does not apply to the news media.

<b>5. Case Report</b>	
<b>Topic:</b>	Antibiotics in chickens
<b>Who:</b>	District Court
<b>When:</b>	July 2003
<b>Where:</b>	Palmerston North
<b>What happened:</b>	<p>The Commerce Commission laid charges against a company Medallion Trading Limited alleging the company's advertising breached the Fair Trading Act 1986.</p> <p>The company advertised claims that its chickens were fed "no antibiotics".</p> <p>The Commerce Commission's investigations revealed that the chickens had in fact been fed coccidiostats, a type of antibiotic and some had also been fed a mix of other antibiotics.</p> <p>The Commission considered the offending to be serious because it was very difficult for consumers to verify the claims being made. Also consumers were prepared to pay a premium for such chickens and so were utterly reliant on the antibiotic free claims being accurate.</p> <p>The company raised issues about the classification of coccidiostats as antibiotics and whether or not there had been a systems failure in the feed formula used. Nevertheless the company pleaded guilty and was fined \$10,000 plus costs.</p>
<b>Comments:</b>	The Court accepted the Commission's view that while there may be issues regarding the classification of the coccidiostats and the feed formula systems the company had failed to accurately represent to consumers the characteristics of the chickens. This was inconsistent with the aims of the Fair Trading Act which requires an informed market place.

<b>6. Case Report</b>	
<b>Topic:</b>	Telecommunications Sector advertising
<b>Who:</b>	District Court
<b>When:</b>	September 2003
<b>Where:</b>	Auckland
<b>What happened:</b>	<p>A major telecommunications provider, Telstra Clear promoted a "Chat 'N Surf" offering 30 hours "free" internet access per month if a minimum of \$30 was spent on toll calls.</p> <p>The promotion was advertised on television and aired a total of 86 times nationally.</p>

	<p>In fact the offer was not available to approximately 53,000 of the defendant's customers with existing bundled telephoned and internet plans.</p> <p>The terms and conditions of the offer appeared in small print for 4 seconds towards the end of the television advertising.</p> <p>In the Commission's view the disclosure of the terms and conditions was inadequate and would not have been seen by viewers.</p> <p>The company was fined \$3,000 plus costs after pleading guilty to breaching the Fair Trading Act.</p>
<b>Comments:</b>	<p>The relatively low fine suggests the Court gave credit to Telstra Clear for having thoroughly reviewed and overhauled its compliance procedures earlier this year. This decision reminds advertisers of the dangers in attempting to qualify advertising messages with small print conditions.</p>