

## Regulators deal with more Aussie hogwash

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### Speed read

Some Aussie corporates have been caught telling porkies again.

In another tale of misleading marketing, an ACCC investigation into "free range" pork products has exposed three major suppliers that were unable to support their claims with fact.

Below, we explain why New Zealand corporates should be treading carefully around their consumer law obligations, which are materially the same as those in Australia. The consequences of non-compliance are very real.

From a legal perspective, it's important that the marketing team knows that they can't always go the whole hog. The moral of the story, in ten words?

Aussies continue to ham it up; don't tell porkies, too.



### The Detail

Australia's equivalent of the Commerce Commission, the ACCC, recently investigated allegations of misleading conduct in the Australian pork industry and found that several products promoted as "free range" and "bred outdoors" did not accurately reflect the living conditions of the swine in question.

Three suppliers have made court-enforceable undertakings to publish corrective notices and implement a consumer law compliance program. One of the suppliers will also change the title and logo of its pork production standard so as not to mislead consumers.

In the ACCC's press statement about the deceptive hogwash, Chairman Rod Sims explained why misleading claims must be given the chop:<sup>1</sup>

*"When claims such as "free range" or "bred free range" are misused, consumers may be misled into paying more for a product feature that doesn't exist... Competitors are also harmed as legitimate free range producers unfairly lose their competitive advantage. Innovation suffers when consumers and business lose trust in the integrity of claims."*

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More recently, the Australian Federal Court imposed a \$250,000 pecuniary penalty against a supplier of “free range” eggs after misleading conduct proceedings were brought by the ACCC.<sup>2</sup>

New Zealand’s Fair Trading Act prohibits misleading business practices in materially the same way as in Australia. Intentional acts of deception can even have criminal consequences – in 2014, the Commerce Commission successfully brought Crimes Act charges against a Northland-based chicken farmer for falsely advertising cage eggs as “free range”.<sup>3</sup>

This isn’t the first time we’ve written about the ACCC dealing with cases of commercial porkies. In [Trams, billboards, and disclosing pricing](#), we joked that Australian telcos continue to provide fertile examples of what not to do in terms of FTA compliance, such as Telstra being [pinged](#) for its deceptive iPhone 6 advertisements late last year.

Exaggerated or misrepresentative marketing carries real legal risk, and the Commerce Commission and ACCC’s industry-specific focus often falls squarely on targets such as free range claims, green washing, and also telcos.

In the end, nothing beats real-life case studies as a clear signal of the regulators’ current willingness to investigate non-compliant business practices. The idea is that the Commission treats these cases as examples for industry, meaning they are more likely to prosecute on subsequent breaches in the relevant industry.

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1. ACCC, [“ACCC concludes review of ‘free range’ and other similar claims in the pork industry”](#) (3 Sep 2015).

2. ACCC, [“Federal Court orders \\$250,000, penalty against Darling Downs Fresh Eggs for misleading ‘free range’ claims”](#) (14 September 2015)

3. Commerce Commission, [“Forest Hill Farm owner sentenced to home detention for free range egg deception”](#) (5 Aug 2014).

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