

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



AUSTRALIAN COMPETITION AND CONSUMER COMMISSION V OSCAR WYLEE PTY LTD [2020] FCA 1340

Federal Court of Australia, Katzmann J, 18 September 2020

A company fined for misleading consumers about donations to charity and affiliation with a charity

Key words: Australian Consumer Law, Misleading or Deceptive Conduct, Fundraising, False or Misleading Representations, Contraventions, Penalties

1. The respondent, Oscar Wylee Pty Ltd (Oscar Wylee), made statements between 13 January 2014 and 31 December 2018 that for each pair of glasses a consumer purchased from Oscar Wylee it donated another pair of glasses to someone in need. The respondent also stated that it made such donations at or around the time of the consumer's purchase. During the time in question, Oscar Wylee sold 328,010 pairs of glasses but donated only 3,181 pairs of glasses.
2. Consequently, the Australian Competition and Consumer Commission (ACCC) contended that Oscar Wylee had, in trade or commerce:
 - 1.1 engaged in misleading or deceptive conduct, in contravention of s 18 of the *Australian Consumer Law* (ACL); and
 - 1.2 engaged in conduct that was liable to mislead the public as to the quantity of goods, namely one pair for the customer and one pair to be donated, in contravention of s 33 of the ACL.
3. In addition, between at least 1 January 2014 and 31 December 2018, Oscar Wylee represented that it was closely affiliated with Rose Charities. However, its charitable association with Rose Charities throughout the period was confined to one donation totalling \$2000, which it made on 4 February 2014, and the donation of 100 glasses frames, which it made during 2014.
4. As result of this conduct, the ACCC contended that Oscar Wylee, in trade or commerce:
 - 2.1 engaged in misleading or deceptive conduct, in contravention of s 18 of the ACL; and
 - 2.2 made false or misleading representations that it had an affiliation with Rose Charities, in contravention of s 29(1)(h) of the ACL.

5. Oscar Wylee admitted the contraventions. The Court ordered that Oscar Wylee pay pecuniary penalties under s 224(1) of the ACL, totalling \$3.5 million.
6. Additional consent orders required that for a period of 6 years from the date of the order, Oscar Wylee be restrained from engaging, in trade or commerce, in conduct that is liable to mislead the public by making statements to the effect that Oscar Wylee is making charitable or philanthropic donations of goods or money in a particular amount or within a particular timeframe, unless it is in fact making those donations in that amount or within that timeframe, and that throughout that period it retains a written record of the amount and timeframe of the donations. A similar order applied to its association with a charitable organisation.
7. Further orders required corrective advertising by Oscar Wylee on its website, its Facebook page and its Instagram page, a 3 year compliance program and payment of the ACCC's costs of \$30,000. A Penal Notice was also included in the penalties, as follows:

PENAL NOTICE

TO: OSCAR WYLEE PTY LTD ACN 154 936 526

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT;
OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU

TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

IMPLICATIONS



This course of conduct occurred over four years and was done in the full glare of public notice on a national scale. There are provisions in state fundraising legislation about third party fundraising, sometimes registration, reporting and rules for its conduct. It would be interesting to know if any State regulators had received complaints about the situation or their internal regulatory activities had such behaviours on their radar. If regulators do not detect or follow up inappropriate behaviour promptly, then their primary legislation falls into disrepute, and even its ritualistic and ceremonial value as a social, moral compass wanes.

It is of further note that the ACCC, as a relatively modern national regulator, took this action and was able to have the court levy remedial actions and undertakings that are beyond the legislative powers of aging state legislation.

For more materials on fundraising reform refer to Justice Connect #Fixfundraising.
<https://justiceconnect.org.au/campaigns/fix-fundraising/>

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/cth/FCA/2020/1340.html>

Read more notable cases in [The Australian Nonprofit Sector Legal and Accounting Almanac series](#).

Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

Date of creation: September 2020

Number of case: 2020-126

Disclaimer: The material included in this document is produced by QUT's [Australian Centre for Philanthropy and Nonprofit Studies](#) (ACPNS) with contribution from some authors outside QUT. It is designed and intended to provide general information in summary form for general informational purposes only. The material may not apply to all jurisdictions. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have.

Commons licence: CC BY-NC-ND

[This work is licenced under a Creative Attribution 4.0 International Non Commercial and No Derivatives licence \(CC BY-NC-ND 4.0\).](#)



ACPNS SUPPORTING THE SECTOR

QUT's Australian Centre for Philanthropy and Nonprofit Studies is a small centre with BIG impact. Since 2001 it has taken a leading role in nonprofit teaching and research, benefiting the sector here in Australia and beyond.

RESEARCH

COURSES

RESOURCES

EVENTS

QUT Business School
The Australian Centre for Philanthropy
and Nonprofit Studies

qut.edu.au/business/acpns