

The 'free to roam' case: Why perceptions matter for misleading claims by business

July 10 2013, by Stephen King

The Federal Court of Australia has brought down its decision in the ['free to roam' case](#). The Court has clarified that our consumer protection laws are about, well, consumers!

Some background to the case [can be found here](#). In brief, two chicken processors made statements that their chickens, when growing, were 'free to roam in large [barns](#)'. The Australian Competition and Consumer Commission (ACCC) noted that the chickens each had less space than an A4 sheet of paper for much of their growing cycle. The ACCC claimed that the advertising was misleading or deceptive, and contravened the Australian Consumer Law. The Federal Court has agreed.

The controversy behind the case is that chickens ['flock'](#). They do not tend to wander aimlessly, even if given the chance. An expert in [animal welfare](#) provided evidence to the Court that:

"The scientific literature on [stocking](#) density indicates that stocking densities [more than those involved in the case] do not affect the [spatial distribution](#) of broiler chickens, the time spent walking, the distances travelled by commercial [broiler chickens](#) or walking ability ...".

At least [one commentator](#) made the same point arguing that the ACCC was not protecting animal welfare by its case.

No, they weren't!

As the Court has made clear, animal behaviour and animal welfare is not the relevant test. The Consumer Law is anthropomorphic. It asks what consumers will infer from claims made by business.

"It is necessary for the Court to determine how this statement would reasonably be understood by a significant number of those persons to whom it was directed and, in particular, whether the phrase would have conveyed, as the ACCC contended, the assertion that the chickens had "substantial space available allowing them to roam around freely" in the sheds."

And the Court agreed with the ACCC.

For business the lesson is clear. In advertising, business must ask themselves a simple question: What will consumers infer from my claims? If the inference is false then the advertisement is misleading or deceptive. Whether 'organic', 'full of fruit', 'free range' or some other term, the consumer laws look at the interpretation by consumers.

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