

Order NOT Entered

No: (P)NSD256/2013

Federal Court of Australia
District Registry: New South Wales
Division: General

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
Applicant

HOMEOPATHY PLUS! AUSTRALIA PTY LTD ACN 134 266 149 and another named
in the schedule
Respondent

ORDER

JUDGE: Justice Perry

DATE OF ORDER: 22 December 2014

WHERE MADE: Adelaide

THE COURT DECLARES THAT:

- 1) The First Respondent and the Second Respondent have in trade and commerce:
 - a) engaged in conduct that was misleading and deceptive or was likely to mislead and deceive, in contravention of section 18 of the Australian Consumer Law (“**ACL**”); and
 - b) in connection with the supply or possible supply of homeopathic treatments or products (“**Homeopathic Treatments**”), and in connection with the promotion of the supply of Homeopathic Treatments, made false or misleading representations that the vaccine publicly available in Australia for whooping cough (“**Vaccine**”) is of a particular standard or quality in contravention of sections 29(1)(a) and (b) of the ACL,
by publishing, or causing to be published, on the website www.homeopathyplus.com.au (“**Website**”):
 - c) from 1 January 2011 until around 26 April 2012, an article entitled “Whooping Cough – Homeopathic Prevention and Treatment” (the “**First Whooping Cough Article**”) in which a representation was made to the effect that the Vaccine is short-lived, unreliable and no longer effective in protecting against whooping cough;
 - d) from 11 January 2013 until around March 2013, an article entitled “Whooping Cough – Homeopathic Prevention and Treatment” (the “**Second Whooping Cough Article**”) in which a representation was made to the effect that the Vaccine may not be the best

solution for, is of limited effect, and is unreliable at best, in protecting against whooping cough; and

- e) from 3 February 2012 until around March 2013 an article entitled “Government Data Shows Whooping Cough Vaccine a Failure” (the “**Government Article**”) in which a representation was made to the effect that the Vaccine is largely ineffective in protecting against whooping cough;

when, in fact, the Vaccine is effective in protecting a significant majority of people who are exposed to the whooping cough infection from contracting whooping cough.

- 2) The First Respondent and the Second Respondent have in trade or commerce:
 - a) engaged in conduct that was misleading and deceptive or was likely to mislead and deceive, in contravention of section 18 of the ACL;
 - b) in connection with the supply or possible supply of Homeopathic Treatments, and in connection with the promotion of the supply of Homeopathic Treatments, made false or misleading representations that the Homeopathic Treatments are of a particular standard or quality in contravention of section 29(1)(a) and (b) of the ACL; and
 - c) in connection with the supply or possible supply of Homeopathic Treatments, and in connection with the promotion of the supply of Homeopathic Treatments, made false or misleading representations that Homeopathic Treatments have a use or benefit in contravention of section 29(1)(g) of the ACL,

by publishing, or causing to be published, on the Website:

- d) the First Whooping Cough Article;
- e) the Second Whooping Cough Article; and
- f) the Government Article in conjunction with the Second Whooping Cough Article,

in which representations were made to the effect that there was a reasonable basis, in the sense of an adequate foundation, in medical science to enable it or them (as the case may be) to state that Homeopathic Treatments are a safe and effective alternative to the Vaccine for the prevention of whooping cough when, in fact:

- g) there is no reasonable basis, in the sense of an adequate foundation, in medical science to enable the First Respondent and the Second Respondent to state that Homeopathic Treatments are safe and effective as an alternative to the Vaccine for the Prevention of Whooping Cough; and
- h) the Vaccine is the only treatment currently approved for use and accepted by medical practitioners in Australia for the prevention of whooping cough.

THE COURT ORDERS THAT:

- 3) The matter is listed for directions at 9.30 am on Wednesday 4 February 2015 in order to set a timetable for any further evidence on the question of penalties and submissions including on the injunctive and other final orders sought by the Applicant.

Date that entry is stamped:

Deputy District Registrar

Schedule

No: (P)NSD256/2013

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent:

FRANCES MERCIA SHEFFIELD