

# AUSTRALIAN JOURNAL OF COMPETITION AND CONSUMER LAW

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## EDITORIAL

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## ARTICLES

**Serving the goals of trademark owners through the Australian Consumer Law: A reflection on *Google Inc v ACCC* – Althaf Marsoof**

The practice of “keyword advertising” has come under close academic and judicial scrutiny in the field of trademarks. Yet, it was not until recently that the controversial advertising practice had been viewed through the lens of consumer protection. Thus, in *Google Inc v ACCC*, Google’s keyword advertising scheme (known as AdWords) was challenged under the consumer protection provisions of the *Trade Practices Act 1974* (Cth) (which was replaced by the *Australian Consumer Law*). Although this approach had the potential of overcoming the stringent “use as a trademark” requirement that must be satisfied to succeed in any action under the *Trade Marks Act 1995* (Cth), Google’s ultimate victory raises serious concerns in respect of protecting the interests of trademark owners and consumers in relation to the misleading and deceptive use of trademarks in keyword advertising, in particular where it becomes necessary to hold online service providers such as Google accountable for the infringing conduct of their users. In the circumstances, it is suggested that the accessorial liability provisions of the *Australian Consumer Law* (which were also in the *Trade Practices Act*) provide a better approach in serving the interests of trademark owners. .... 244

**Exempting environmental protection boycotts from competition laws: Should purpose or public benefit be the test? – David Goodwin**

Secondary boycotts and boycotts affecting international trade are generally illegal in Australia, but for the past two decades boycott conduct has been permissible if it is for the dominant purpose of environmental or consumer protection. The exemption is housed in s 45DD(3) of the *Competition and Consumer Act 2010* (Cth). This article reviews *Rural Export and Trading (WA) Pty Ltd v Hahnheuser*, the leading case that examined the exemption, and identifies difficulties of interpretation and practical application inherent in s 45DD(3). The article also considers an alternative approach to this exemption: a case-by-case assessment of public benefit, relying on existing authorisation mechanisms in the Act, instead of a generalised dominant purpose test. Conduct and its effects, rather than purpose, would then be the focus of analysis. The article notes that current approaches to determining public benefit chiefly address economic factors, suggesting the need for a more refined approach giving greater emphasis to environmental and social considerations. .... 260

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