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EDITORIAL

The More Things Change, the More 95

ARTICLES

Proving Misleading or Deceptive Conduct: Challenges Posed by the Internet – *Adrian Coorey*

This article provides a discussion on the meaning of the elements of s 18 of the *Australian Consumer Law* (ACL) as applied to the internet and some challenges faced when applying that law. The difficulty arising in most of these challenges lies not so much in understanding the law itself, but rather in the application of the law (as it exists in the offline environment) to the unique characteristics and distinctive features of the internet. Where appropriate, the discussion provides general propositions to assist in avoiding contraventions of the law. Given the substantial number of online commercial transactions and the fact that s 18 of the ACL is the most litigated legislative provision in Australian law, it is hoped that this article will provide greater public awareness of the challenges that exist. 97

Influencers, Instagurus, and Enablers: Using Accessorial Liability to Establish a Norm of Behaviour in Relation to Disguised Viral Marketing – *Lynden Griggs* and *Aviva Freilich*

The nature of advertising is changing rapidly. With an interconnected world, online advertising has now become more prevalent, more valuable, and possibly more insidious than traditional forms of advertising. In this article, the authors consider the practice of “disguised marketing”. This practice is often facilitated by people collectively known as “influencers” or “instagurus”, and while the failure to identify a commercial connection between these persons and the goods or service can lead to harmful consumer outcomes, it is suggested that to establish a better norm of conduct, the regulator may well consider targeting the “enabler” of such information. This enabler, depending on the context, may be the search engine or social media site that allows the display of information to occur. When this targeting is combined with regulatory direction and primary liability as appropriate, the infrastructure necessary to achieve better consumer outcomes will be in place. 113

Extracting Value from Big Data: Taking Big Data Processing and Analysis into Account – *Suiyi Zhang*

Big data is an increasingly important part of business. As a result, it has started to attract the attention of competition regulators. So far, both commentators and regulators have focused on whether or not possession of big data can be a barrier to entry or a source of market power. However, in some circumstances just focusing on the possession of big

datasets may not be enough. Big data is valuable because of the information that is contained in it. This information can only be extracted through processing and analysis. However, big data demands a new approach to processing and analysis which is costly. Given these characteristics of big data, the author argues that in certain circumstances the cost of processing and analysis necessary to transform data into information must be explicitly considered when analysing the competitive implications of possessing big data.	124
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