



Australian  
Competition &  
Consumer  
Commission

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Our ref: 2043648  
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9 September 2014

Graham W Burke  
Co-Chairman and Co-Chief Executive Officer  
Village Roadshow Limited  
PO Box 2275  
Prahran VIC 3181

By email: [Graham\\_Burke@vrl.com.au](mailto:Graham_Burke@vrl.com.au)

Dear Mr Burke

**Re: Allegation of misleading and deceptive conduct against iiNet Limited**

Thank you for your correspondence dated 29 August 2014 to the Chairman of the Australian Competition and Consumer Commission in which you raise concerns regarding representations made by iiNet Limited. Mr Sims has passed your letter onto me for my consideration.

You refer to a number of representations made by iiNet in their blog titled 'Fighting for our Customers'. This publication appears to set out iiNet's position in relation to the proposed government response to internet piracy. It canvases the approach taken in other countries, the effectiveness of these approaches and encourages consumers to contact MPs on the issue. I understand that you are concerned that these statements may have the potential to mislead consumers regarding issues around internet piracy and illegal downloads.

A legal threshold question in considering whether conduct might be considered misleading under the Australian Consumer Law is whether the activities of concern are 'in trade or commerce.'

In making this assessment, the ACCC has regard to principles set out by the Courts. These include whether the conduct appears to promote or provide a contribution to public debate on issues of general concern to the community (for examples laws or government policy). We also consider whether there is a trading relationship present and if the conduct forms part of a commercial transaction.

While these factors are not exhaustive and each matter must be considered in light of its context, after reviewing the information outlined in your letter, it is my view that it is unlikely that the conduct you refer to is in trade or commerce. Rather, the representations appear to have been made in the context of public discourse, with many of the representations going towards the wider public debate on an issue of policy.

I would be pleased to receive further information or hear from you on the issue of trade or commerce, noting that I have only considered the limited information available to date. The ACCC is unable to pursue all matters raised, and in this regard, you may also wish to obtain your own advice on the matter, noting that the law provides private rights of action.

If you have any questions or concerns about this letter, please do not hesitate to contact me on (02) 6243 1350 or Emily Woolbank on (02) 6243 1246.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a long horizontal flourish extending to the right.

Scott Gregson  
Executive General Manager  
Consumer Enforcement