



Australian
Competition &
Consumer
Commission

Our Ref: [REDACTED]
Contact Officer: Ms Jennifer Taylor-Davis
Contact Phone: (07) 3835 4666

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

24 August 2012

[REDACTED]

[REDACTED]

Carbon price statements made by [REDACTED]

Thank you for letter dated 15 August 2012 in response to the letter from the Australian Competition and Consumer Commission (ACCC) dated 9 August 2012.

The ACCC's letter requested information from you regarding the basis for the representations on an in-store sign at the [REDACTED]

The purpose of this letter is to issue you as the franchisees of [REDACTED] with a warning about conduct which the ACCC considers is likely to have breached the Australian Consumer Law (the ACL).

The conduct

The sign displayed at [REDACTED] contained the following representation:

*DUE TO NEW
CARBON TAX*

*GAS PRICES WILL
INCREASE ON
01.07.12*

*TO
\$29 FOR 9KG
REFILL.*

In response to the ACCC's enquiries, you advised this office of the following information:

- You are the franchisee of [REDACTED] which you operate as sole traders in partnership.
- [REDACTED] was responsible for approving and displaying the sign.
- The franchisor, [REDACTED] was not consulted or otherwise involved with the display of the sign.
- The price of a 9kg gas refill was increased to \$29 on 1 July 2012, which amounted to a \$2 increase. Based on information provided to you by [REDACTED] you understand that only 72c of the increase is attributable to the carbon price.
- [REDACTED] displayed the sign on 3 July 2012 and removed it on 7 July 2012. You removed the sign because you decided that it may be confusing and you were not properly informed on what you could and could not say about the impact of the carbon price.
- [REDACTED] has not made other representations concerning the effect of the carbon price.

Warning to [REDACTED] franchisees of [REDACTED]

Section 18 of the ACL prohibits persons from engaging in misleading or deceptive conduct in trade or commerce. False or misleading representations with respect to the price of goods or services are also prohibited by section 29(1)(i) of the ACL

As previously outlined, you are free to set prices as you choose, however you must ensure that any representation you make about the reason for any increase is true and accurate. Based on the information you have provided, it does not appear that [REDACTED] had a reasonable basis for stating that the full price increase for 9kg gas refills was due to the carbon price. In these circumstances, we consider that the representation is likely to have breached sections 18 and 29(1)(i) of the ACL.

The ACCC has the power to issue infringement notices of \$6,600 for corporations and \$1,320 for individuals for each contravention of section 29 of the ACL. In addition, the ACCC has powers to seek civil pecuniary penalties of up to \$1.1 million for corporations and \$220,000 for individuals for breaches of this section.

However, given the limited extent of the conduct and the fact that you removed the sign after only four days, this office has decided to issue you as the franchisees of [REDACTED] with a warning in respect of your conduct on this occasion. I advise that the ACCC may publicly refer to this outcome.

In light of this warning that has now been issued to you as the franchisees of [REDACTED] you should now be aware of your obligations

under the ACL and the penalties that may apply if you make misleading representations of this nature in the future. Should the ACCC receive further complaints alleging similar conduct, the ACCC may consider taking more formal action against you.

I strongly recommend that you review [REDACTED] practices to ensure that you have a reasonable basis for any claims you make in the future about the impact of the carbon price.

The ACCC has published a guide Carbon price claims - a guide for business, which is available on the ACCC's website at www.accc.gov.au/carbon for your information. This publication may assist you to avoid future conduct that may raise similar concerns.

Should you have any questions about this letter, please contact me or Jennifer Taylor-Davis on (07) 3835 4666 or by email at shannon.murphy@acc.gov.au or jennifer.taylor-davis@acc.gov.au.

Yours sincerely



Shannon Murphy
Assistant Director
Enforcement Operations – Queensland.