FEDERAL COURT OF AUSTRALIA

Australian Competition and Consumer Commission v Safe Breast Imaging Pty Ltd [2014] FCA 238

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| Citation: | Australian Competition and Consumer Commission v Safe Breast Imaging Pty Ltd [2014] FCA 238 |
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| Parties: | **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v SAFE BREAST IMAGING PTY LTD (ACN 120 489 410) and JOANNE FIRTH** |
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| File number: | WAD 514 of 2011 |
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| Judge: | **BARKER J** |
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| Date of judgment: | 18 March 2014 |
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| Catchwords: | **CONSUMER LAW** – misleading or deceptive conduct –whether promotional materials, breast health reports and breast imaging information package were directed to a section of the public – whether materials conveyed assurance representation, risk of cancer representation, substitute for mammography representation, medical doctor representation and registered medical practitioner representation – whether each representation, if made, was false or misleading – accessorial liability |
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| Legislation: | *Competition and Consumer Act 2010* (Cth) s 155, Sch 2, s 18, s 29(1)(g), s 34, s 224(1)(e), s 232(1)(e), s 246(1)(b)  *Trade Practices Act 1975* (Cth) s 52, s 53(c), s 55A, s 155 |
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| Cases cited: | *Australian Competition and Consumer Commission v Breast Check Pty Ltd* [2014] FCA 190  *Australian Competition and Consumer Commission v Michigan Group Pty Ltd* [2002] FCA 1439  *Campomar Sociedad Limitada v Nike International Limited* [2000] HCA 12; (2000) 202 CLR 45  *Fencott v Muller* [1983] HCA 12; (1983) 152 CLR 570  *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* [1982] HCA 44; (1982) 149 CLR 191  *Yorke v Lucas* [1985] HCA 65; (1985) 158 CLR 661 |
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| Date of hearing: | 22 & 23 April 2013 |
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| Date of last submissions: | 29 May 2013 |
|  |  | |
| Place: | Perth | |
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| Division: | GENERAL DIVISION | |
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| Category: | Catchwords | |
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| Number of paragraphs: | 153 | |
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| Counsel for the Applicant: | Ms S Russell | |
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| Solicitor for the Applicant: | Minter Ellison | |
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| Counsel for the Respondents: | Ms J Firth appeared in person on behalf of the respondents | |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| WESTERN AUSTRALIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | WAD 514 of 2011 |

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| BETWEEN: | AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  Applicant |
| AND: | SAFE BREAST IMAGING PTY LTD (ACN 120 489 410)  First Respondent  JOANNE FIRTH  Second Respondent |

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| JUDGE: | BARKER J |
| DATE OF ORDER: | 18 MARCH 2014 |
| WHERE MADE: | PERTH |

THE COURT ORDERS THAT:

1. The Court will receive submissions and hear from the parties as to the appropriate relief to be granted and the terms in which final orders in the proceeding should be made.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

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| WESTERN AUSTRALIA DISTRICT REGISTRY |  |
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| BETWEEN: | AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  Applicant |
| AND: | SAFE BREAST IMAGING PTY LTD (ACN 120 489 410)  First Respondent  JOANNE FIRTH  Second Respondent |

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| JUDGE: | BARKER J |
| DATE: | 18 MARCH 2014 |
| PLACE: | PERTH |

**REASONS FOR JUDGMENT**

1. Between April 2009 and August 2011, Safe Breast Imaging (the first respondent), of which Ms Firth (the second respondent) was the sole director, shareholder and business manager, conducted a breast imaging services business using a device known as a multi‑frequency electrical impedance mammograph (or ***MEM device***). The service was offered to customers in various parts of Australia.
2. Safe Breast Imaging promoted its business to the public by:
3. Google AdWords;
4. a website located at www.safebreastimaging.com.au;
5. a video published in various locations on the internet, including YouTube; and
6. a double sided pamphlet.
7. Safe Breast Imaging ordinarily charged a customer a fee of about $145 for its services, which consisted of taking images of the customer’s breasts using the MEM device, interpreting those images and the customer’s answers to a questionnaire, then preparing a “Breast Health Report” which was provided to each customer with an information package that contained information on the MEM device, an explanation of risk profile scores disclosed in the report and a document entitled “Frequently Asked Questions about Safe Breast Imaging and Breast Screening using the MEM” (or ***FAQ sheet***).
8. The Australian Competition and Consumer Commission (***ACCC***) claims that in contravention of the *Trade Practices Act 1974* (Cth) (***TP Act***) and the *Australian Consumer Law* (being Sch 2 to the *Competition and Consumer Act 2010* (Cth)) (***ACL***), at material times, the promotional materials and the breast health report, together with the information pack conveyed the following false or misleading representations:
9. That breast imaging using the MEM device could provide an adequate scientific medical basis for assuring a customer that they do not have breast cancer (the ***assurance representation***).
10. That breast imaging using the MEM device could provide an adequate scientific medical basis for assessing whether a customer may be at risk of breast cancer (***risk of cancer representation***).
11. That there was an adequate scientific medical basis for breast imaging using the MEM device as a substitute for mammography (***substitute for mammography representation***).
12. That Australian registered medical doctors were involved in (a) providing the breast imaging service, particular in interpreting the images, and (b) preparing the breast health reports (respectively the ***medical doctor representation*** and the ***registered medical practitioner representation***).
13. ACCC additionally claims Ms Firth was knowingly concerned in or a party to the contraventions of the first respondent.
14. ACCC seeks remedies to the following effect:
15. declarations as to the contraventions alleged;
16. injunctions to prevent repetition of the contraventions alleged;
17. an order for publication to assist in remedying the contraventions;
18. pecuniary penalties;
19. an order that Ms Firth be disqualified from managing corporations;
20. an order that a copy of the sealed reasons for judgment be retained by the Court for the purposes of the *Competition and Consumer Act 2010* (Cth);
21. costs.
22. Ms Firth represented both herself and, with leave, Safe Breast Imaging in the proceeding. The respondents, by their pleadings and written opening and closing submissions, accept many of the allegations made against them. At trial they chose not to call any witnesses, apart from Ms Dale Kift. Ms Firth chose not to go into evidence. As a result, there is no evidentiary base to support a number of submissions made by the respondents in relation to the claims made against them.
23. By their defences the respondents admit Safe Breast Imaging carried on business under the name of Safe Breast Imaging and that Ms Firth worked in the business between April 2009 and August 2011. In written submissions they state that:

* the business was a “start up” business;
* up until the time of ceasing the breast health services in August 2011, the respondents made changes to promotional materials and information provided to customers and prospective customers to “clarify any possible doubt about the distinction between a breast health imaging service and a breast cancer screening service”;
* neither of them was ever a threat to the health of the community and it would be a gross exaggeration to suggest that the services provided by them were the cause of “potentially critical health consequences”;
* neither of them are any longer engaged in a breast related service and have not been since August 2011;
* they are willing to provide a signed undertaking that they will never provide or be employed in a breast imaging service in Australia;
* at relevant times they provided a “front line service” which was a “gateway to a range of services”, and that at all times customers were encouraged to use the gateway to access the broadest range of services available to safeguard their breast health.

1. The respondents deny that they ever provided an assurance at any time to anyone that they did not have breast cancer. They accept that to say that they did would be to misrepresent the nature of the service offered.
2. The respondents say the breast health service they offered at material times was the starting point for many women “on their breast health journey”. They submit that:

It was recommended verbally and in writing that along their journey, clients work in partnership with their health professional, continue to engage with the general practitioner and use all available options to safeguard their breast health.

1. Accordingly, the respondents deny any suggestion that they offered, promoted or promised “breast cancer screening services”.
2. They also deny that they ever offered, promoted or promised their breast health service as a substitute for mammography.
3. The respondents say they have never received any formal complaints from any clients, prospective clients, health practitioners, regulatory bodies or government authorities.
4. They say customers who received the service:

* specifically sought out the service;
* made a conscious and informed decision to attend;
* may or may not have been eligible for free and voluntary breast cancer screening services provided on behalf of government;
* may or may not have undertaken free and voluntary breast cancer screening services provided by government;
* travelled to the imaging appointment at locations not associated with breast cancer screening mammograms;
* completed a comprehensive health questionnaire;
* undertook breast imaging using the MEM device;
* paid a fee for the service, which included the MEM imaging and associated completion of the questionnaire, a breast health report to be provided in a subsequent email, recommendations to undertake regular imaging, including the BreastScreen screening, annual clinical breast examination with their doctor, information on the MEM technology, strategies for improving health and breast health, and a risk profile to their breast health.

1. The respondents contend that ACCC has reached incorrect conclusions based on false allegations that in their promotional campaigns they made the alleged representations.
2. So far as the MEM device is concerned, the respondents say it is a non-invasive and radiation free technique which can show hormonal imbalance and presence of excessive glandular or fibrous tissue and normal anatomical change occurring over a lifetime. They say the MEM device can accurately measure the local properties of breast tissue that may indicate differences of impedance between normal, hormonal and suspicious tissue; and that tumour cells exhibit greater conductivity of electrical current and permittivity than normal cells.
3. The respondents contend studies have shown that electrical impedance scanning has been found to provide high sensitivity for the verification of suspicious breast lesions; and that there are clear visual distinctions and statistically significant differences in mammary gland conductivity.
4. As a result of the claims made by ACCC and the response of the respondents three key issues fall for determination in this proceeding:
5. whether Safe Breast Imaging made each of the five pleaded representations to the public;
6. whether each representation, if made, was false or misleading as alleged; and, if so
7. whether Ms Firth was knowingly concerned in or a party to the contraventions of the first respondent.

# were the representations made to the public?

## Was the assurance representation made?

1. ACCC pleads, in essence, that by reason of statements made on the website and in the video, the pamphlet, breast health reports, and information on the MEM device and FAQ sheet provided in the information pack, and by any combination of such conduct, Safe Breast Imaging represented that breast imaging using the MEM could provide an adequate scientific medical basis for assuring a customer that they do not have breast cancer – which it calls the assurance representation.
2. ACCC submits that each of the promotional materials was directed to the public at large and particularly targeted women who:

* were interested in acquiring breast imaging services from Safe Breast Imaging; or
* had already acquired breast imaging services from Safe Breast Imaging.

1. ACCC submits a reasonable member of the class of consumers targeted by the promotional materials would have no special knowledge or attributes which would lead them to ascribe a different meaning to the promotional materials than a reasonable member of the wider community.
2. It submits that this class of consumer is likely to hold preconceptions of medical breast imaging such that they instinctively correlate breast imaging with investigations primarily concerned with the presence, or otherwise, of breast cancer.
3. As to the breast health reports and report materials that were provided to each customer following the provision of the breast imaging service, ACCC submits that those materials were directed at women who had received the breast imaging service from Safe Breast Imaging and so may be treated as a separate and distinct section of the public.
4. ACCC submits that a reasonable woman who received a breast health report and report materials would be likely to understand the content of those documents in the context of the information obtained from the promotional materials.
5. Turning to the promotional materials, so far as the website statements are concerned, ACCC highlights the following statement that appeared on the website at all material times:

* “It is understandable to fear breast disease. That is why we are here to reassure you.”

1. ACCC also draws attention to the following testimonials published on the website at material times:

* “Apart from convenient, the procedure was quick, easy, it didn’t hurt and it wasn’t scary. Best of all, it put my mind at ease. Now, I am working with my naturopath on reducing my risk and improving my hormonal balance.”
* “I feel more reassured by what you have said.”
* “Luckily the lump in my breast was and is still fine.”

1. So far as the video is concerned, ACCC draws attention to the following statement made in it:

* “This comfortable and affordable test can put your mind at ease about the state of your breast health.”

1. So far as the pamphlet is concerned, ACCC draws attention to the following statements made in it:

* “Five reasons to book you(sic) breast health imaging now: …

1. To map your breasts and reassure you they are benign.

2. To confirm tenderness and pain is associated with hormonal changes.

…

5. To recheck your breasts and confirm there are no new changes of concern.”

* “The MEM discriminates between normal, hormonal and suspicious tissue and conditions. Safe Breast Imaging measures your breast health and detects signs of abnormal pathology.”

1. So far as the breast health reports are concerned, ACCC draws attention to the following statements made in them:

* “Your MEM report focuses on present and future risk. Information in your report may or may not specifically include past anatomical findings (e.g. cysts, fibroadenomas) and other benign conditions. These conditions are very common and they very rarely become malignant.”
* “The MEM can discriminate between normal, hormonal and suspicious conditions. For example, fibroadenomas and cysts are not malignant. They are benign in nature and usually do not undergo malignant changes.”
* “Most importantly of all the MEM can measure the local electrical properties of breast tissue that may indicate differences in impedance between normal, hormonal and suspicious tissue.”

1. So far as the information package is concerned, ACCC draws attention to the following statements made in the FAQ sheet:

* “Most women have breast concerns to some degree including lumps, pain, tenderness and discharge. Most women will not get breast cancer. Imaging can provide peace of mind.”
* “Many women who are diagnosed with breast cancer may not be aware of any symptoms. Breast health screening helps to reassure you when you are OK and recommend positive strategies if there is any concern.”
* “I am too scared to have breast imaging done. ... Safe Breast Imaging can offer peace of mind and a procedure that is not painful.”
* “This can be of great assurance to young women with a family history of breast cancer or personal interest in identifying early changes that may indicate possible future risk.”

1. The respondents submit that, in assessing the materials upon which ACCC relies, both for the pleaded assurance representation but also the other pleaded representations, the relevant target audience should be identified with precision.
2. In relation to the promotional materials, the respondents say the target audience:
3. were informed women interested in breast health;
4. were aware of the limitations and dangers of mammography; and
5. either would not, or could not, have breast cancer screening mammography; and
6. actively sought out alternatives to screening mammography.
7. They also submit that the reasonable consumer is aware of breast cancer and highly informed about the characteristics, limitations and procedure of mammography, including shortcomings “such as the painful procedure, missed tumours, misdiagnosis, damage to breast tissue”.
8. I accept the submission made on behalf of ACCC concerning the target audience in relation to the promotional materials, including the Google AdWords, the website material, the video and the double sided pamphlet. They were plainly directed to a section of the public, women at large, not merely a group of well‑informed women with the attributes contended for by the respondents.
9. I accept the submission of ACCC that when considering the promotional materials, the Court must have regard to the hypothetical ordinary, reasonable member of that class likely to be affected by the conduct and what meaning or likely meaning they would attribute to the words and images used in context. In doing so, the Court should consider all consumers who fit within that class, including both well and poorly educated consumers: *Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd* [1982] HCA 44; (1982) 149 CLR 191 (***Parkdale***); *Campomar Sociedad Limitada v Nike International Limited* (2000) 202 CLR 45 (***Campomar***). As such, the distinction drawn by the respondents should be rejected.
10. I also accept that the class of consumers to whom the promotional materials were directed would have no special knowledge or attributes which would lead them to ascribe a different meaning to the promotional materials than a reasonable member of the wider community and that they are likely to hold preconceptions of medical breast imaging such that they would instinctively correlate breast imaging with investigations primarily concerned with a presence or otherwise of breast cancer.
11. I reject the respondent’s submission that consumers seeking breast cancer screening would not inadvertently come across the service through searching the internet, that is to say that customers would need to be looking precisely for alternatives to mammography in order to find information about the safe breast imaging service on the internet. I accept that it is apparent from the Google AdWords search terms that a consumer seeking information on breast screening was also targeted by Safe Breast Imaging and would be directed to their website through Google AdWords when searching for “breast cancer screening” and “breast cancer screening perth”.
12. The respondents could not control the range of people falling within this sector of the public who might access the promotional materials and accordingly the well‑informed as well as the poorly educated consumer must all be regarded, accepting that when viewing these promotional materials it is necessary to do so from the vantage point of a hypothetical ordinary, reasonable member of the class.
13. So far as the pamphlet is concerned, there is a suggestion made by the respondents that it was only ever provided to customers who had already received the MEM service and to others to whom customers passed on the pamphlet, along with other information about the service. There is, however, no evidence to support this suggestion and it is inconsistent with evidence given by Ms Firth during her examination by ACCC pursuant to s 155 TP Act and *Competition and Consumer Act 2010* (Cth) prior to commencement of proceedings and the general pleaded position of the respondents.
14. Indeed, I accept the submission made by ACCC that there is no evidence as to what, if any, information was passed onto customers in the course of the service, or what information, if any, customers passed on with the pamphlet. Thus, there is no basis to submit that any information given to the relevant public prevented the pleaded representations from arising or that it remedied the otherwise misleading effect of the pamphlet.
15. The respondents also suggest that by whatever means a consumer was made aware of the service, any misunderstanding they might have as to the service (particularly as to whether consumers would consider the MEM service as a substitute for mammography, an issue dealt with further below) would be remedied by viewing the website and later discussions with Ms Firth. The difficulty with this submission is that there is no evidence as to what may have been said in any such discussions between customers and Ms Firth. The statements on the website identified by the respondents appear after scrolling through the home page and after statements which highlight the perceived negative characteristics of mammography such as “no squeezing/no radiation”, and in many instance would only be read by a consumer who was pointed specifically to the website using the Google search engine and clicking on a Safe Breast Imaging Google AdWords advertisement. In that case the statements pointed to by the respondents would be read by consumers whose understanding of the MEM service was framed by the misrepresentation contained in the Google AdWords advertisements. That is to say, their perspective would already have been framed in a particular way before they got to any other representations about the service.
16. There is a question, however, whether it can properly be said that the breast health reports and report materials were directed to a relevant section of the public, rather than to individual customers of Safe Breast Imaging. In *Australian Competition and Consumer Commission v Breast Check Pty Ltd* [2014] FCA 190 (***Breast Check***), having regard to the particular facts and circumstances presented, I was not satisfied that the documents described as breast health reports and related report information were relevantly published to a section of the public.
17. The breast health reports and report information adduced in evidence in this proceeding are not, on the face of it, dissimilar to those adduced in evidence in *Breast Check*. In *Breast Check* I was not satisfied that it was possible to isolate a criterion or criteria by which a reasonable hypothetical member of a class of “the public” contended for could be identified so far as those particular documents were concerned. The difficulty I had, among others, was that there were women who received the reports and information who had varied medical histories and family backgrounds, not to say ages.
18. So far as ACCC’s submission is concerned, that there is a separate class of the public being those women who have undergone breast imaging and who then receive the breast health reports and report information, I do not see any relevant difference between the factual circumstances in the present case and those that presented themselves in *Breast Check*. Accordingly, I do not accept ACCC’s submission that there is a relevant public comprised of such women, as distinct from individual customers to whom the breast health reports and report information was directed.
19. However, I am satisfied that there is a relevant class of the public being those women who have undertaken the breast imaging and received breast health reports and report information, to whom promotional information such as information on the MEM device and the FAQ sheet, as part of the information pack was directed. All women in that class have in common the fact that they received MEM device information and the FAQ sheet. They did so because they were women who had undertaken breast imaging and been provided with breast health reports and report information.
20. I find that the reasonable hypothetical member of this additional class of consumers who received the MEM device information and FAQ sheet had the same knowledge or attributes as a reasonable member of the class of consumers targeted by the promotional materials generally, as described above. That is to say, they had no special knowledge or attributes which would lead them to ascribe a different meaning to the promotional materials than a reasonable member of the wider community and they are likely to have held preconceptions of medical breast imaging such that they instinctively correlate breast imaging with investigations primarily concerned with the presence or otherwise of breast cancer. Nothing in the process of breast imaging or in the breast health report or report information affects this assessment. Women in this class are relevantly none the wiser for having undergone breast imaging or having read their breast health report or report information.
21. I should add that, although a number of women who underwent breast imaging were patients of Dr Frank Golik, the evidence shows that there was no formal relationship between Dr Golik or the health clinic that he effectively operated in Queensland, and Safe Breast Imaging. There is no evidence of any understanding these customers of Safe Breast Imaging had of the breast imaging service which can be attributed to Dr Golik. It appears Safe Breast Imaging rented a room at the clinic operated by Dr Golik for single days during a period from around September 2008 until July 2011. Ms Firth used the room to undertake breast imaging. Dr Golik knew of his patients having undergone imaging because a number later informed him that they had done so. Dr Golik did not undertake the breast imaging, did not produce breast health reports and did not interpret any of the images developed by Safe Breast Imaging. On the evidence, he had no association at all with Safe Breast Imaging or Ms Firth.
22. As to the assurance representation pleaded, the respondents submit that at no time did Safe Breast Imaging make statements to clients that they did not have breast cancer. However, ACCC does not allege that Safe Breast Imaging explicitly told customers “that they did not have breast cancer”. It is the ACCC’s case, (taking into account my finding about the relevant public) that the assurance representation arises both from the promotional materials and the FAQ sheet and arises from what Safe Breast Imaging represented it could do, not just what it actually did.
23. In my view, the assurance representation arises from the overall impression conveyed by the promotional materials and the FAQ sheet and from particular statements or phrases made in them relied on by ACCC and set out above. For example, statements in the promotional materials as to capability to provide an assurance using words or phrases such as “reassure”, “reassurance”, “peace of mind” or to put a person’s “mind at ease”.
24. The FAQ sheet repeats the “peace of mind” phrase and also employs the expression “helps to reassure you when you are okay”.
25. I should add that even if the breast health reports and report information are taken into account from the respondents’ point of view nothing qualifies the assurance representation arising from the promotional materials. The breast health reports in several instances rather than convey any different representation or qualify such a representation conclude that conditions identified using the MEM device are “benign”.
26. In providing an assurance or stating that it could provide one, Safe Breast Imaging purported to provide or offer a current assessment as to the absence of breast cancer in a customer’s breast tissue – thus assuring them that they do not have breast cancer.
27. This is not, as suggested by the respondents, synonymous with the capability to diagnose breast cancer or to confirm the presence of breast cancer in a customer’s breast tissue. The allegation made is not that Safe Breast Imaging made representations to the effect that it could use the MEM device to diagnose breast cancer, only that it could assure a customer they do not have breast cancer.
28. I am satisfied that the context in which the promotional materials and FAQ sheet were published was such that those to whom the representations were conveyed would expect or be likely to expect that there was an adequate scientific medical basis to support the use of the MEM device for the purposes represented.
29. I find that the assurance representation was made as pleaded in respect of the promotional materials including the FAQ sheet.

## Was the risk of cancer representation made?

1. ACCC pleads that by the website, pamphlet, breast health reports and information package, and by any combination of such conduct, Safe Breast Imaging represented that breast imaging using the MEM device could provide an adequate scientific basis for assessing whether a customer may be at risk from breast cancer; and if so, the level of such risk – which it calls the risk of cancer representation.
2. ACCC says that in contrast to the assurance representation, the risk of cancer representation is not a representation about the capability of the MEM device to provide a current assessment that a customer does not have breast cancer (by stating her conditions are benign, for example), but that the MEM device can identify whether there are current indicators that a person is *at risk of breast cancer* – matters that increase that person’s risk of developing breast cancer in the future.
3. So far as the website is concerned, ACCC draws attention to the following statements:

* “The MEM differentiates breast tissue type and highlights any area that may require further investigation.”
* “Most importantly of all the MEM can accurately measure the local electrical properties of breast tissue that may indicate differences in impedance between normal, hormonal and suspicious tissue. Tumour cells exhibit greater conductivity of electrical current than normal…”
* “Did you know? Women can have changes in their breasts that may be there for years or decades before a diagnosis. Safe Breast Imaging has helped many women to identify these early changes, when there are more options available to resolve them. By being proactive with your breast health, you can take steps to minimise your breast cancer risk. Start now by organising your breast imaging today with Safe Breast Imaging.”
* “Safe Breast Imaging can assist you to monitor your breast health and may provide an early indication of breast disorders. This includes lumps, tenderness, fibrocystic changes, and glandular tissue that may or may not show up on a mammogram.”

1. So far as the pamphlet is concerned, ACCC highlight the following statements:

* “Five reasons to book you(sic) breast health imaging now: …

4. To obtain an assessment of your breast health, and determine what further action is required to reduce your future risk of diagnosis.”

* “The MEM discriminates between normal, hormonal and suspicious tissue and conditions. Safe Breast Imaging measures your breast health and detects signs of abnormal pathology.”
* “Safe Breast Imaging measures your breast health and detects signs of abnormal pathology. Sometimes early clues are present years before they show up on a mammogram.”

1. So far as the information on the MEM device provided in the information package is concerned, ACCC highlights the following statements:

* “The MEM can discriminate between normal, hormonal and suspicious conditions. For example, fibroadenomas and cysts are not malignant. They are benign in nature and usually do not undergo malignant changes. They can be readily identified in the MEM images.”
* “Most importantly of all the MEM can measure the local electrical properties of breast tissue that may indicate differences in impedance between normal, hormonal and suspicious tissue. Tumour cells exhibit greater conductivity of electrical current than normal, as well as permittivity.”
* “It may or may not be seen on the mammogram/ultrasound due to the very early changes in cellular behaviour such as electrical conductivity. This may increase the risk of a positive diagnosis in the future.”

1. So far as statements made in the FAQ sheet are concerned, ACCC identifies the following:

* “This can be of great assurance to young women with a family history of breast cancer or personal interest in identifying early changes that may indicate possible future risk.”
* “Who recommends the MEM? Referring practitioners who want a safe breast imaging option for their patients recommend the MEM as a valuable diagnostic tool.”

1. The ACCC also draw attention to statements made in a number of breast health reports concerning how the MEM report “focusses on present and future risk” and other statements not dissimilar from those set out above. However, because, as found above, I do not consider it appropriate to treat statements made in the breast health reports as statements made to the public, as distinct from individual customers, I leave those particular statements to one side. Nonetheless, the respondents defend their conduct generally by emphasizing culminated risk profile scores that were stated in the breast health reports issued to customers.
2. The respondents say that in the breast health report, the risk profile scores represent a risk to a client’s breast health which ranges from low risk, if the MEM images are symmetrical with no distinguishing features and no significant conditions recorded in the questionnaire, to a high risk with a profile of four that includes the likes of asymmetrically high conductivity in one part of one breast, along with risk factors highlighted in the client questionnaire.
3. The respondents say there are some well documented risk factors that are commonly recognised which were confirmed by Associate Professor Houssami, the expert witness called by ACCC, during her cross‑examination.
4. The respondents accordingly say ACCC have chosen an interpretation that is based on an incorrect assumption that any health risk associated with the MEM service is a risk of cancer.
5. The respondents say Safe Breast Imaging aimed to provide a meaningful report to clients that motivated them to be responsible for their breast health and lower their risk and that a level of risk was provided to each client who had the imaging and received a report, ranging from one – low risk, to four – high risk. Occasionally, women were given risk score of five – confirmed diagnosis, if they advised they had recently been clinically diagnosed with breast cancer.
6. I accept ACCC’s submission in relation to those submissions, however, that in making these points the respondents conflate their explanation of the risk profile provided to customers with an assessment of the risk of cancer.
7. I find that the statements made in the promotional materials relied upon by ACCC and as set out above conveyed the representation that the MEM device could provide an adequate scientific medical basis for “assessing whether a customer may be at risk from breast cancer” and if so, the level of such risk. It is not pleaded that Safe Breast Imaging represented that the MEM device was capable of providing a current assessment that the customer does not have breast cancer. It is the difference between a risk assessment and a diagnosis representation. The “risk” representation arises from the actual word being used and an overall assessment of the statements made that are identified above.
8. I find that the risk of cancer representation was made as pleaded in respect of the promotional materials including the MEM device information and FAQ sheet.

## Was the substitute for mammography representation made?

1. ACCC pleads that by the Google AdWords, the website, the video, the pamphlet, breast health reports and the information package, or any combination of such conduct, Safe Breast Imaging represented that there was an adequate scientific medical basis for using the MEM device for breast imaging as a substitute for mammography – which it calls the substitute for mammography representation.
2. The respondents say Safe Breast Imaging did not represent the MEM device was a substitute for breast cancer screening mammograms by reason of information on the website, in the questionnaire or in the breast health reports and, in fact, clients were recommended in breast health reports to have breast screening if eligible. The respondents also say that on the website there were statements such as “not a replacement for a mammogram” and “Important: if you have a breast lump, see your doctor” and finally “MEM breast imaging is not a breast cancer screening technology”.
3. The respondents say there are many differences in the breast health service offered by Safe Breast Imaging compared to the breast cancer screening program using a mammogram, with examples of the differences set out on the Safe Breast Imaging website.
4. The respondents say that during cross‑examination Professor Houssami admitted that other technologies were sometimes used as a substitute for breast cancer screening mammogram, such as ultrasound and magnetic resonance imaging (***MRI***), and also admitted that no randomised controlled trials had been performed on ultrasonography and MRI.
5. The respondents also say that breast cancer screening mammograms, in summary, specifically exclude certain groups of women and are not available to the whole population and do not look at breast health, are not 100% accurate, have been proven to misdiagnose, cause harm and increase risk of breast cancer and lead to only about 30% of the breast cancers diagnosed annually.
6. Thus, the respondents say that it is not “unethical to offer other options to women to encourage them to be responsible for their breast health, and ensure greater availability of breast imaging options”.
7. ACCC submits that the substitute for mammography representation primarily arises out of the statements made in the relevant materials that compare, or invite comparison of, the MEM device and mammography – frequently in a matter that contrasts the perceived limitations of mammography and the purported features of the MEM device.
8. ACCC emphasises the structure of the allegation that was made, namely, that (1) there was and is an adequate scientific medical basis for (2) using the MEM device for breast imaging as a substitute for mammography. It says these two components should be considered together.
9. ACCC submits that the materials invite a reader to compare breast imaging using the MEM device of mammography by contrasting the perceived limitations and negative characteristics of mammography with the alleged capabilities and benefits of the MEM device. In so doing, they imply that breast imaging using the MEM device can provide a comparable service to mammography, but without the perceived negative limitations of mammography and is a substitute for mammography.
10. I accept the ACCC’s submissions, save that I do not consider statements made in the breast health reports and report information were made to the public, as distinct from individual customers.
11. The following statements should be noted:

* The advertisement triggered when a consumer used the search term “perth mammogram options”:

“mammogram alternative/Mammography Does Not Detect all Breast Lumps. Try Safe Breast Check or see \www.safebreastimaging.com.au”.

* “This is a wonderful safe option to mammograms”.
* “Is the MEM as good as a mammogram?/The MEM and a mammogram are both valid breast imaging options. The MEM is comfortable, safe and radiation free. In addition to identifying current problems, the MEM can provide clues to your breast health years before something suspicious may appear on a mammogram”.
* “Do I still need a mammogram? For most women the MEM is sufficient. It is your personal option to choose to undergo further imaging… It also offers an option for women of all ages and for the large number of women who choose not to have a mammogram”.
* “Are you concerned about breast symptoms but are too young for a mammogram? Perhaps you are eligible for a mammogram but are anxious about the procedure.”
* “Breast symptoms?\Worried about breast cancer?\Too Young for a mammogram?\Want another screening option?”.

1. The comparative advertising style is readily apparent in the pamphlet. In addition to the express references to mammography, the front page includes the statements “Safe – no radiation\Comfortable – no squeezing\No x-rays\Suitable for all ages\No referral required”, which should be compared with the statements at the bottom of the page, “You now have a choice”. The pamphlet, it should be noted, employs a bright pink colour scheme that has come to be widely associated with official breast cancer awareness campaigns.
2. A similar strategy was also used on the homepage of the website from at least 20 January 2011 until 3 June 2011, which stated “Not a Mammogram\No squeezing\No radiation\All ages\All breast types” or close variations. In this context the phrase “Not a Mammogram” is likely to confirm the comparison for the reasonable consumer, rather than alert them to the fact that the breast imaging service offered could not be used as a substitute for mammography.
3. In my view, the overall effect of the promotional materials was that the advertising created the erroneous impression that Safe Breast Imaging could provide a comparable service to mammography, but without the negative limitations of mammography. In my view, a reasonable hypothetical consumer would be led to believe that Safe Breast Imaging’s breast imaging is comparable to mammography, but without the limitations associated with mammography, and that they could choose to have that service as a substitute for mammography.
4. I am not satisfied that the various statements pointed to by the respondents prevent the substitute for mammography representation from arising. At one point, while the statement made is that “You want to use all the tools available to give you the best chance of getting a good picture of your breast health”, this is immediately followed by the statement, “So you can make an informed breast management decision. After all, breast cancer is very difficult to find, no matter what the technology”.
5. Also, the statement that “At Safe Breast Imaging we can give you an indication of your current breast health status. It is your starting point”, is immediately followed by the statement, “Please do not necessarily assume that because you have symptoms you have breast cancer. There are many options you have to improve your current health and risk status”.
6. I find that the substitute for mammography representation was made as pleaded in respect of the promotional materials including the information pack.

## Were the medical practitioner representations made?

1. ACCC alleges that by the website, the video, the breast health report including in some instances the name of the doctor who purportedly interpreted the customer’s images and prepared the breast health report and the information package, and by any combination of such conduct, Safe Breast Imaging represented that the:
2. interpretation of a customer’s images;
3. interpretation of the customer’s questionnaire answers; and
4. preparation of a breast health report

was:

1. performed by a medical doctor named in the breast health report (which ACCC calls the medical doctor representation); and, or would be
2. performed by a medical doctor who is registered to practise as a medical practitioner in Australia (which ACCC calls the registered medical practitioner representation).
3. On the face of it, these representations do arise and it is not clear exactly on what basis the respondents deny that they do. As a matter of fact, the respondents admit that the individual named in the breast health reports did not interpret the images and questionnaire answers and did not write the reports or authorised the use of their names in the reports.
4. I accept that the ordinary, reasonable hypothetical consumer was likely to understand that Safe Breast Imaging was offering a medical breast imaging service and would expect a service of this nature to be provided with medical oversight.
5. In the pamphlet it is stated:

* “What happens after the imaging?\MEM screening is a medical procedure. Your images are sent to a trained doctor to interpret and provide you with a result and recommendations. You receive your medical report confidentially.”
* Will the person taking the images tell me my results?\No. The Safe Breast Imaging Medical Report outlines your results with the Safe Breast Imaging doctor’s recommendations.”

1. In the video Ms Firth says, in explaining the breast imaging service, that “Trained doctors then interpret the images and provide you with a medical report”.
2. Nothing in the breast health reports ameliorates the position as a doctor was named, usually next to a box which states “Doctor” (all but one of the breast health reports in issue naming the doctor (Dr Frank Golik)).
3. In my judgement, the ordinary reasonable consumer would likely understand in these circumstances that a doctor was in some way involved in the preparation of the breast health report they would receive.
4. I accept the submission made by ACCC that it is untenable to suggest, as Safe Breast Imaging does in its defence, that a customer would not conclude that the doctor named was involved in the preparation of the report, particularly where the doctor named was not that customer’s doctor and the promotional materials and the report materials made it clear that the breast health reports are prepared by a trained medical doctor.
5. I also accept the submission that even if Dr Golik’s name did not appear in the report, an ordinary reasonable consumer is likely to understand that where a “trained doctor” is involved in a medical breast imaging service, the doctor would be able legally to practise as a doctor within Australia. While there are no express statements which give rise to the registered medical practitioner representation, I accept this is clearly implied in the circumstances. This is not a case where a consumer could expect that the practitioner making assessments as to the presence or absence of breast cancer would be acting outside the system of formal registration and supervision of medical doctors in Australia.
6. I find that the two medical practitioner representations were made to the public as pleaded by ACCC.

# were the representations accurate?

## Was the assurance representation accurate?

1. ACCC called Professor Houssami to give evidence in relation to each of the three scientific representations, namely, the assurance representation, the risk of cancer representation and the substitute for mammography representation.
2. Professor Houssami is well qualified to give evidence concerning the adequacy of the scientific medical basis for each of the relevant representations, having been a breast physician in active clinical practice for 22 years, a clinical researcher with 12 years’ experience in breast cancer research and both her clinical practice and research focus on breast diagnosis and specifically breast imaging screening. She has significant experience in research design and test evaluation and in systematic evidence reviews. Her research is particular focussed on the design and conduct of research aimed at evaluating new breast technologies in the clinical field and aims to support evidence‑based practice in breast diagnosis. She currently leads the breast cancer research portfolio as part of Sydney Medical School’s screening and test evaluation program.
3. Professor Houssami has conducted systematic evidence reviews of electrical impedance devices (not just the MEM device). For the purposes of this proceeding she prepared an evidence table and analysed her findings from a systematic evidence review to answer the questions put to her.
4. In respect of the assurance representation, Professor Houssami concluded that based on the scientific evidence, the information from the MEM device could not be used to provide an assurance to a customer that they do not have breast cancer and that:

There is insufficient evidence to support that EI (electrical impedance) breast imaging or the MEM device can reliably identify persons at risk from having breast cancer, nor to *accurately differentiate* between those whose breast(s) are likely to harbour or contain breast cancer and those who do not have breast cancer.

(Emphasis in original.)

1. In the course of cross‑examination Professor Houssami explained that the evidence required to be an adequate scientific medical basis is dependent on the specific application of the technology. That is, if a technology is to be used for screening an asymptomatic population (women with no symptoms), generally a randomised clinical trial is required. But if the technology is to be used for diagnostic testing (where a woman has symptoms), randomised clinic trials are preferable, but not required – instead what is required is high quality prospective trials not affected by major bias.
2. The respondents did not adduce expert evidence on the accuracy of the assurance representation. In their written closing submissions, the respondents seek to rely on selective quotes from studies referred to in Professor Houssami’s expert report as evidence that that MEM device can “differentiate between cancerous (malignant) and non‑cancerous (benign/normal) breast tissue”. Each of these studies was considered to be of poor quality by Professor Houssami. I accept her opinion in this regard.
3. The respondents also made a submission that the literature search, which formed the basis of Professor Houssami’s expert opinion, was not exhaustive. However, this submission is unsupported on the evidence and was not explored with Professor Houssami during cross‑examination. Rather she gave evidence as to the process she followed in conducting her systematic evidence review and the type of material she relied on and the type she did not rely on.
4. I also accept the submission made on behalf of ACCC that the Court may infer that the article referred to in [101] of the respondents’ closing submissions and in the defence at [132], which is a review article, was properly excluded from the systematic review by Professor Houssami and would not have changed her opinion.
5. I find that the assurance representation was false or misleading.

## Was the risk of cancer representation accurate?

1. Professor Houssami concluded that there is insufficient evidence to support the use of the MEM device as a reliable means of assessing if a person is at risk from breast cancer. Based on an assessment of the studies reported in the Evidence Table in her report, no good quality studies have been conducted which could be used to indicate the capability of the MEM device in assessing breast cancer risk.
2. Professor Houssami said that despite the generally poor design of the studies, which she would expect to overestimate the accuracy of electrical impedance, the results indicate “modest and broadly variable accuracy”. She identified only one relatively large study, which considered the role of electrical impedance in “screening”. She said one would expect to see sensitivity consistently reported at over 75%. The Stojadinovic study (2008), however, reported “very low” sensitivity of 26.4%, which Professor Houssami explained means:

EI only identified about one quarter of the women with breast cancer – this sensitivity is not acceptable for breast cancer detection and implies that EI for breast imaging cannot reliably identify women at risk of having breast cancer.

1. I find that the risk of cancer representation was false or misleading.

## Was the substitute for mammography representation accurate?

1. Professor Houssami concluded that there is no evidence that electrical impedance technology can be used as a substitute for mammography, and that the reported sensitivity of electrical impedance from the one large study (26.4%) was “unacceptably low” and “incompatible with breast cancer screening practice”.
2. Professor Houssami explained that the key characteristic of mammography as a breast cancer screening investigation is its proven ability to confer a health benefit from the early detection of breast cancer. She noted that:

*[T]here is no evidence* showing that the MEM device for breast imaging is able to detect early breast cancer leading to health benefit. In contrast, large scale RCTs (random clinical trials) have established that mammography detects early‑stage breast cancer and that its ability to do so *directly leads to a reduction in breast cancer deaths*.

(Emphasis in original.)

1. All the studies identified by Professor Houssami considered the efficacy of electrical impedance when informed by the prior results of other imaging modalities. There are no studies which directly or accurately compare electrical impedance with mammography (or ultrasound).
2. I find that the substitute for mammography representation was false or misleading.

## Were the medical doctor representations accurate?

1. There is clear evidence to establish the falsity of the medical doctor representation in that the individuals named in some or all of the breast health reports:
2. did not interpret the customer’s image and questionnaire answers;
3. did not write the reports or authorise the use of their names on the reports; and
4. in some instances, were not medical doctors.
5. Of the 22 breast health reports in evidence, Dr Golik is named as the “doctor” on each of the reports save one. However, as explained above, Dr Golik had no involvement or association with Safe Breast Imaging.
6. The undisputed evidence of Dr Golik is that he never drafted or contributed to the drafting of any documents, including breast health reports for Safe Breast Imaging. His evidence is that he never authorised the use of his name in any breast health reports. Patients of his, it appears, decided of their own volition to use the Safe Breast Imaging service, which at material times operated out of a room in Dr Golik’s clinic. His evidence is uncontested by the respondents.
7. As to individuals named in breast health reports not being medical doctors at all, this relates to the report which names a Dr Valeria Astorga. She did not have a medical qualification and it appears her name was used on the breast health report in error.
8. I find that the medical doctor representation was false or misleading.
9. There is also clear evidence to establish the falsity of the registered medical practitioner representation. The individuals who interpreted the MEM device images and customer questionnaire answers and who prepared the breast health reports were not registered to practise as medical practitioners in Australia.
10. Ms Firth, in her response to the s 155 notice in June 2011, confirmed that Safe Breast Imaging employed Suganya Selvarajah as a report writer. She also gave evidence during her s 155 examination in July 2011 and again in August 2011, that Safe Breast Imaging paid Ms Selvarajah, Jhelum Paraliker and Elena Kennebury to write the breast health reports.
11. Ms Firth initially said at the examination the report writers were qualified medical practitioners or doctors. She later confirmed she knew they were not registered to practise as medical practitioners in Australia.
12. The uncontested evidence of Mr Anthony Hilton, deputy director of ACCC, also confirms that none of the report writers engaged by Safe Breast Imaging to prepare breast health reports were registered to practise as medical practitioners in Australia at relevant times.
13. I find that the registered medical practitioner representation was false or misleading.

## Summary of contraventions

1. I find, therefore, that each of the representations alleged by ACCC arising from the promotional materials and the information pack:
2. Were misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL and s 52 of the TP Act at material times.
3. Were false or misleading as to the performance characteristics, uses or benefits (and, in relation to the medical practitioner representations and substitute for mammography representations, approval) of Safe Breast Imaging’s breast imaging, in contravention of s 29(1)(g) of the ACL and s 53(c) of the TP Act at materials times.
4. In relation to the promotional materials, was liable to mislead the public as to the nature, characteristics and suitability for purpose of the breast imaging service using the MEM device, in contravention of s 34 of the ACL and s 55A of the TP Act at material times.

# Was Ms Firth knowingly concerned in the contraventions?

1. ACCC alleges Ms Firth is liable as an accessory to the contraventions of Safe Breast Imaging as she was knowingly concerned in, and party to, its contraventions of ss 18, 29 and 34 of the ACL and ss 52, 53 and 55A of the TP Act.
2. Accessorial liability arises in the ACL by virtue of:
3. Section 224(1)(e) (pecuniary penalties).
4. Section 232(1)(e) (injunctions).
5. Section 246(1)(b) (non‑punitive orders).
6. It is well understood that to be liable as an accessory, a person must have intentionally participated in the contravention and have actual knowledge of its essential elements: *Yorke v Lucas* [1985] HCA 65; (1985) 158 CLR 661 at 667‑668.
7. In *Fencott v Muller* [1983] HCA 12; (1983) 152 CLR 570 at 584 in the context of the constitutional challenge to the validity of s 75B of the TP Act, Gibbs CJ described the provision as requiring a “close rather than a remote involvement in the contravention”. I accept the submission of ACCC that this observation should be read in the context of ss 224 and 232 which are broad, providing that a person need only be knowingly concerned in or a party to a contravention “in any way directly or indirectly”.
8. In this case, ACCC draws attention to the circumstance that Ms Firth has a sufficient degree of control over the activities of Safe Breast Imaging to be considered fixed with knowledge of its contraventions.
9. In that regard, there is no dispute that, at material times, Ms Firth was the sole director, sole shareholder and secretary of Safe Breast Imaging and its managing director and was responsible for the promotion and management of the company.
10. Ms Firth admitted at the s 155 examination that: she caused particular statements to be published on the website; approved, narrated and caused the video to be published; drafted and caused the distribution of the pamphlet; approved the contents of the breast health reports; and drafted and caused the distribution of the report materials.
11. Ms Firth also instigated Safe Breast Imaging’s use of the Google AdWords advertising service, knew about the search terms which would trigger an advertisement including “breast cancer” and that data was available through Google as to the volume of searches using those search terms. She was also responsible for accepting or rejecting search terms.
12. Further, Ms Firth personally contributed to the medical practitioner representations by telling customers that they would receive a report produced by a doctor.
13. I accept the submission of ACCC that the adequacy of the scientific medical basis of the three science representations is not simply a matter of opinion which might be held honestly without any factual basis and, in a case such as the present, a person will have the requisite knowledge that representations are false where they have no reason to believe that such factual basis existed: see *Australian Competition and Consumer Commission v Michigan Group Pty Ltd* [2002] FCA 1439 at [340].
14. I am satisfied that Ms Firth could not have reasonably known and had no reason to believe that there was an adequate scientific medical basis for the adequacy of the three science representations and so knew they were false.
15. In the course of ACCC’s investigation into Safe Breast Imaging’s conduct, the company was required to provide details of the published clinical trials and scientific research into the efficacy of the MEM device for breast imaging. In response, Ms Firth, on behalf of the company, provided articles by Cherepenin (2002) and Ng (2008) and they were referred to by her at the s 155 examination in August 2011.
16. Ms Firth said during the s 155 examination that she had one other document in her possession being a clinical trial done in Europe and could not recall any other clinical trials of scientific materials in her possession. She confirmed that in providing documents in response to the notice, she did so to the best of her ability at the time. She also stated that, “We haven’t done any clinical trials here that are published in scientific literature”.
17. In August 2011, Ms Firth also provided the ACCC with an article by Prasad from 2008.
18. I infer, on the basis of this information, that this was the extent of the information and documents held by Ms Firth at material times.
19. I also note that no further reference has been made to the Cherepenin article by the respondents in the proceeding.
20. Similarly, I note the respondents do not rely on the Prasad article in their submissions to support the respondents’ denial of the falsity of each of the adequacy of science representations. Instead, the article is referred to in the context of the respondents’ denial of the substitute for mammography representation arising and in support of the description of the technical operation of the MEM device.
21. As ACCC points out, the Prasad article makes it clear that electrical impedance could be used as an “adjunct to mammography and ultrasound but that the differentiation of malignant or benign lesions based on impedance measurements needs further investigation”.
22. I accept the submission made on behalf of ACCC that this article could not reasonably give rise to a belief that there is an adequate scientific medical basis for the adequacy of science representations and that this must have been apparent to Ms Firth at material times.
23. As to the Ng article, this is referred to in the defence at [132] in support of assertions as to the technical operation of the MEM device and at [213] to refute the allegation that “scientific medical research and knowledge does not support the use of the MEM device as a means of (i) reliably investigating the indicators of breast cancer”. Ms Firth, however, sought only to rely on the abstract of this article and nothing more.
24. I accept the submission of ACCC that the abstract makes no conclusions about the capabilities of the MEM device or the adequacy of the scientific medical basis for it and indeed makes no specific reference to the MEM device. Again, it only makes reference to electrical impedance devices as currently being used as an adjunct diagnostic tool.
25. Nothing said at the s 155 examination or by way of submission in this proceeding by Ms Firth, on behalf of the respondents, provides any evidence of adequacy.
26. I accept the submission made by ACCC that Ms Firth was unable to provide any consistent and compelling description of the capabilities of the MEM device during the s 155 examinations and that given she had access to materials referred to it is clear that the materials did not disclose any basis to inform her understanding of the capabilities of the MEM device, or establish the adequacy of the scientific medical basis for breast imaging using the MEM device.
27. On this basis, I find that Ms Firth knew of no factual basis to support the adequacy of science representations.
28. It is also relevant to note that Professor Houssami was not cross‑examined to any different view by Ms Firth at the hearing.
29. I find in these circumstances that Ms Firth had no reason to believe that the factual basis for the adequacy of science representations existed and so had the requisite knowledge that the representations were false at material times.
30. It is also plain from the evidence referred to above that Ms Firth had knowledge of the falsity of the medical practitioner representations.
31. I find, therefore, that Ms Firth is liable as an accessory for Safe Breast Imaging’s contraventions of:
32. section 18 of the ACL and s 52 of the TP Act at material times;
33. section 29(1)(g) of the ACL and s 53(c) of the TP Act at material times;
34. section 34 of the ACL and s 55A of the TP Act at material times,

on the basis that she:

1. caused Safe Breast Imaging to engage in the contravening conduct; and
2. had knowledge of those matters which established the falsity of misleading nature of each of the representations.

# conclusion

1. For the reasons given above, the Court finds that Safe Breast Imaging contravened the ACL and the TP Act as alleged at material times in respect of the promotional material and information pack, and that Ms Firth is liable for such contraventions as an accessory.
2. The Court will invite further submissions from the parties as to the appropriate relief to be granted and the terms of any orders to be made.

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| I certify that the preceding one hundred and fifty-three (153) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Barker. |

Associate:

Dated: 18 March 2014