

13 December 2013

*Practice Group(s):*

*Antitrust,  
Competition and  
Trade Regulation*

## ACCC Targets Fake Online Reviews

*By Murray Deakin*

### Video Legal Insight Transcript

**BRR** The ACCC has released a new set of guidelines that target fake online reviews of goods and services. Murray Deakin, Partner at K&L Gates joins us to discuss. Murray welcome back to BRR Media.

**MD** Thanks very much Jacqui.

**BRR** So Murray, what is the purpose and the focus of these guidelines?

**MD** Well the ACCC guidelines aim to reduce the risk of consumers being misled by online review platforms. To that end, they have published what I describe to be best practice guidelines for online review platforms to adopt. These are review platforms such as Trip Advisor, Product Review, Urban Spoon, there's a number of websites that effectively collect and republish consumer comments and criticisms and praise in respect of a whole variety of goods and services, and these guidelines are directed to ensuring that consumers who log on to these websites are not misled by fake reviews and are able to reach better informed decisions on the limitations and risks associated with various products and services. So the ACCC guidelines really set out three core principles of conduct they advocate transparency, and this is really directed at platforms and businesses to encourage them to be as transparent with consumers as they can be, particularly in relation to any commercial relationships that online review platforms may have with individual businesses that may influence what is posted against that business in terms of positive and negative reviews. The core of the ACCC guidelines is directed to the principle that there should not be any fake reviews posted or published, and what that is really directed to, Jacqui, is platforms shouldn't publish positive reviews of a business due to a commercial relationship with that business and equally businesses shouldn't post fake reviews of its own business or any competitor's business, and businesses shouldn't pay any third party to write positive reviews of goods or services. There's also this suggestion from the ACCC that review platforms should not remove negative reviews as this could potentially be misleading, unless of course it can be substantiated that the review in question is incorrect.

**BRR** Well a clear development in Australia. Murray, in light of recent global developments, are these guidelines enough to combat misleading and deceptive conduct in Australia?

**MD** Well I think the guidelines are helpful but they're certainly not enough to combat misleading conduct in this area. Firstly, the guidelines are only best practice principles, they're not mandatory legal requirements. Secondly, the guidelines are limited in their application to Australia whereas, a number of online review platforms are based offshore and outside the ACCC's jurisdiction and also the guidelines do not address a number of misleading features of online review platforms, which is a little disappointing. For example, no account is taken of the fact that only some consumers post reviews, some may be inflamed to post a negative review, but the vast bulk of customers never post any reviews and so there's a question as to how reliable these review platforms are. Are they

## ACCC Targets Fake Online Reviews

necessarily representative of the relevant class of consumers and are you getting an accurate picture of the product or service in question by reviewing those consumer posts?

**BRR** And Murray, can you give some tips for companies to ensure compliance with these guidelines.

**MD** Well I think the key tips for businesses is don't write fake reviews about your own business or your goods or services and don't write fake negative reviews about a competitor's goods or services, and certainly don't hire public relations firms to write reviews if the people writing them are not genuine customers. Do engage with review platforms if you believe that posts about your business are fake. We assist clients in this area with take down notices in the face of such fake reviews. It is open to businesses to offer incentive to genuine customers to write reviews, but there are some important guidelines that need to be followed in this area, for example the incentives must be available to consumers regardless of whether they write a positive or a negative review. Businesses should seek legal advice before entering this field to ensure they avoid any misleading or deceptive conduct. So they're just a few tips Jacqui.

**BRR** Well Murray, a really important area for both consumers and businesses, thank you so much for joining us today.

**MD** It's a pleasure.

**BRR** That was Murray Deakin, Partner at K&L Gates. Listeners, if you have any questions for Murray you can send them through either using the panel on your screen or by sending an email to [law@brrmedia.com](mailto:law@brrmedia.com).

---

### Authors:

**Murray Deakin**

[murray.deakin@klgates.com](mailto:murray.deakin@klgates.com)

+61.2.9513.2335

## K&L GATES

Anchorage Austin Beijing Berlin Boston Brisbane Brussels Charleston Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt Harrisburg Hong Kong Houston London Los Angeles Melbourne Miami Milan Moscow Newark New York Orange County Palo Alto Paris Perth Pittsburgh Portland Raleigh Research Triangle Park San Diego San Francisco São Paulo Seattle Seoul Shanghai Singapore Spokane Sydney Taipei Tokyo Warsaw Washington, D.C. Wilmington

K&L Gates practices out of 48 fully integrated offices located in the United States, Asia, Australia, Europe, the Middle East and South America and represents leading global corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit [www.klgates.com](http://www.klgates.com).

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2013 K&L Gates LLP. All Rights Reserved.