



Federal Court of Australia  
District Registry: Queensland  
Division: General

No: QUD931/2016

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
Applicant

**ABG PAGES PTY LTD ACN 138 706 251** and another named in the schedule  
Respondent

**ORDER**

**JUDGE:** JUSTICE RANGIAH

**DATE OF ORDER:** 16 March 2018

**WHERE MADE:** Brisbane

**THE COURT DECLARES THAT:**

1. From at least 1 January 2011 until mid-2016, the first respondent, ABGPages Pty Ltd (**ABGPages**), in trade or commerce, engaged in a system of conduct in connection with the supply or possible supply of on-line advertising services, that was, in all the circumstances, unconscionable within the meaning of:
  - (a) for conduct occurring prior to 1 January 2012, s 22 of the Australian Consumer Law, which is schedule 2 of the *Competition and Consumer Act 2010 (ACL)*; and
  - (b) for conduct occurring from 1 January 2012, s 21 of the ACL,by reason of some, or all, of the following:
  - (c) misleading potential customers as to the number and nature of the businesses which advertised on the ABGPages directory;
  - (d) using high-pressure sales tactics to pressure potential customers to enter into advertising contracts;
  - (e) using written contracts that contained terms which were contradictory, ambiguous or misleading as to the total cost and duration of the contracts;
  - (f) failing to explain to potential customers the material terms of the proposed advertising contracts, including that the stated duration of the contract would



- automatically renew unless the customer gave written notice before a specified number of days prior to an unspecified renewal date;
- (g) refusing to accept customers' attempts to provide notice to cancel advertising contracts;
  - (h) refusing to cancel contracts which customers did not want and did not intend to enter;
  - (i) misleading customers into signing further unwanted advertising contracts for additional categories of advertising;
  - (j) misleading customers who wanted to end their relationship with ABGPages into signing a further contract for 12 or 24 months;
  - (k) persistently telephoning and emailing customers (often contacting customers multiple times a day on multiple days of a week) when attempting to collect money ABGPages claimed was due under the advertising contracts.
2. ABGPages, in trade or commerce, by engaging in or attempting to engage in some or all of the conduct described in paragraphs (a) to (k) above, in connection with the supply or possible supply of on-line advertising services to each of the customers listed below:
- (a) Berrico Consultants;
  - (b) Bruce Ridge Early Childhood Centre and Preschool;
  - (c) Daramalan College;
  - (d) Family Business Australia;
  - (e) First Impressions Beauty Belconnen;
  - (f) Manuka Park Serviced Apartments;
  - (g) Menindee Local Aboriginal Land Council; and
  - (h) Pasadena High School;
- engaged in conduct that was, in all the circumstances, unconscionable in contravention of s 21 of the ACL.
3. From about March 2013 until about mid-2016, ABGPages, by publishing advertisements for a large number of businesses, including high profile businesses such as Telstra Corporation Limited and Kmart Australia Limited, explicitly or impliedly represented that those businesses chose to advertise on the ABGPages website, when in fact they did not and thereby made false or misleading representations in connection with the supply or possible supply of on-line advertising services:



- (a) that the businesses had agreed to acquire services, within the meaning of s 29(1)(d) of the ACL; and
  - (b) that the ABGPages directory was affiliated or associated with the businesses within the meaning of s 29(1)(h) of the ACL.
4. From at least 1 January 2011 until about mid-2016, ABGPages, by explicitly or impliedly representing to customers that the advertising contracts:
- (a) were for a specified term, often at a discounted price; and
  - (b) could be terminated by providing written notice before a specified number of days prior to the renewal date;
- when in fact it was the case that:
- (c) the advertising contracts were designed so that the term of the contract would automatically renew;
  - (d) when the customer ticked the box that indicated they had read and agreed to the terms and conditions, ABGPages asserted that the duration of the contract was automatically renewed for a further term;
  - (e) when a customer attempted to provide notice within the specified number of days to terminate the agreement, ABGPages would not accept the notice of termination and would seek to enforce the extended contract period;
  - (f) after the first year, the cost of the advertising contract often increased to the full price which was up to 10 times the discounted price;
- and thereby made false or misleading representations in trade or commerce in connection with the supply or possible supply of on-line advertising services:
- (g) that the customer had agreed to acquire advertising with ABGPages, within the meaning of s 29(1)(d) of the ACL;
  - (h) as to the total term and therefore total price of the advertising contracts, within the meaning of s 29(1)(i) of the ACL;
  - (i) as to the existence or effect of a condition, right or remedy of a contract between the customer and ABGPages for advertising services, within the meaning of s 29(1)(m) of the ACL.
5. From at least 1 January 2011 until about mid-2016, ABGPages, by explicitly or impliedly representing to customers that:
- (a) they needed to initial a document and return it to confirm their listing;



(b) they could list in an additional category without additional cost by initialling a document and returning it; and

(c) the customer had to sign and return a document after marking the opt-out box to cancel an existing advertising contract;

when in fact initialling and signing and returning the document was treated by ABGPages as entry into a further advertising contract, made false or misleading representations in trade or commerce in connection with the supply or possible supply of on-line advertising services:

(d) that the customer had agreed to acquire advertising with ABGPages in those terms, within the meaning of s 29(1)(d) of the ACL;

(e) as to the existence or effect of a condition, right or remedy of a contract between the customer and ABGPages for advertising services, within the meaning of s 29(1)(m) of the ACL.

6. From at least 1 January 2011 until about mid-2016, by engaging in the conduct outlined at Orders 3 to 5 above, ABGPages engaged in conduct in trade or commerce that was misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL.

7. Either for the purpose of attempting to pressure customers to enter into an advertising agreement or to chase payment of a disputed invoice, ABGPages called:

(a) Menindee Local Aboriginal Land Council at least 993 times between 1 July 2014 and 9 December 2015, including calling over 20 times on 3 separate days and 48 times on one day;

(b) Pasadena High School at least 206 times between 1 July 2014 and 18 March 2015 and 13 times on 18 March 2015; and

(c) First Impressions Beauty Belconnen at least 205 times between September 2014 and July 2015;

and thereby engaged in conduct in connection with the supply or possible supply of on-line advertising services which amounted to undue harassment in contravention of s 50 of the ACL in relation to each of the aforementioned customers.

8. The second respondent, Ms Michele McCullough (**Ms McCullough**):

(a) as sole director and shareholder of ABGPages;



- (b) having managed and controlled the day to day operations of ABGPages since its incorporation in August 2009;
- (c) having designed the unconscionable system referred to in Order 1;
- (d) having designed the detailed telephone scripts, email templates, staff manuals, advertising proposal documents and written terms and conditions;
- (e) having trained staff to follow the unconscionable system referred to in Order 1;
- (f) having enforced staff compliance with the unconscionable system referred to in Order 1;
- (g) having approved the form of the ABGPages website;

was knowingly concerned in the conduct of ABGPages outlined at Orders 1 to 6 above and therefore the contraventions of sections 18, 21 (from 1 January 2012), 22 (prior to 1 January 2012) and 29 of the ACL by ABGPages.

## **THE COURT ORDERS THAT:**

### *Injunctions*

9. ABGPages must not for 5 years from the date of this order, whether by itself, its servants, agents or howsoever otherwise, in connection with the supply or possible supply of advertising services:
  - (a) enforce any contracts entered into before the date of this order; and
  - (b) enter into contracts after the date of this order;with terms which automatically renew or renew upon ticking a box agreeing to the terms and conditions.
10. ABGPages must not for 5 years from the date of this order, whether by itself, its servants, agents or howsoever otherwise, in connection with the supply or possible supply of advertising services, make any of the following representations:
  - (a) a business has agreed to advertise on the ABGPages on-line directory;
  - (b) a contract is for a specified term and can be terminated at the end of that term by giving written notice;



(c) a customer has agreed to acquire advertising with ABGPages by signing documents;

when this is not the case.

11. ABGPages must not, whether by itself, its servants, agents or howsoever otherwise, pursue payment from customers who have, before the date of this order, entered into a contract with ABGPages in connection with the publication of an advertisement.
12. Ms McCullough must not for 5 years from the date of this order in connection with the supply or possible supply of advertising services by an on-line directory services provider (**Supplier**), aid, abet, counsel or procure, or be directly or indirectly knowingly concerned in or party to the promotion or supply of, advertising services to customers in Australia by a Supplier through the use of contract terms which automatically renew or renew upon ticking a box agreeing to the terms and conditions.
13. Ms McCullough must not for 5 years from the date of this Order in connection with the supply or possible supply of advertising services to customers in Australia by a Supplier, aid, abet, counsel or procure, or be directly or indirectly knowingly concerned in or party to, the making of any of the following representations by a Supplier:
  - (a) a business has agreed to advertise on the Supplier's on-line directory;
  - (b) a contract is for a specified term and can be terminated at the end of that term by giving written notice;
  - (c) a customer has agreed to acquire advertising with the Supplier by signing documents;when this is not the case.

#### *Compliance Program orders*

14. Pursuant to s 246(2) of the ACL, ABGPages is to:
  - (a) within 90 days of recommencing trading, establish and implement an ACL compliance program to be undertaken by each employee who deals with or who may deal with Australian Consumers, being a program designed to minimise ABG Pages' risk of future contraventions of sections 18, 21, 29 and 50 of the ACL;
  - (b) for a period of 3 years from the date ABGPages recommences trading, maintain and continue to implement the ACL compliance program referred to in the Order above.



15. Pursuant to s 246(2) of the ACL Ms McCullough, is to, at her own expense:

- (a) within 90 days of the date of this order, attend and undertake a training session on the responsibilities and obligations under sections 18, 21 and 29 of the ACL;
- (b) ensure that the training referred to in paragraph ((a)) is administered by a suitably qualified compliance professional or legal practitioner with expertise in the ACL;
- (c) provide to the ACCC a written statement or certificate from the person conducting the training referred to in paragraph ((a)), within 14 days of completion of the training, verifying that such training has occurred.

*Disqualification orders*

16. Pursuant to s 248 of the ACL, Ms McCullough is disqualified from managing corporations for a period of 5 years.

*Order for findings of fact*

17. A copy of the reasons for judgment, with the seal of the Court affixed thereon, be retained on the Court file for the purposes of s 137H(3) of the CCA.

*Pecuniary penalties*

18. Pursuant to s 224 of the ACL, ABGPages pay to the Commonwealth of Australia pecuniary penalties totaling \$300,000 in respect of its contraventions of the ACL, in instalments as follows:

- (a) \$30,000 within 6 calendar months of the date of this order;
- (b) \$30,000 within 12 calendar months of the date of this order;
- (c) \$30,000 within 18 calendar months of the date of this order;
- (d) \$30,000 within 24 calendar months of the date of this order;
- (e) \$30,000 within 30 calendar months of the date of this order;
- (f) \$30,000 within 36 calendar months of the date of this order;
- (g) \$30,000 within 42 calendar months of the date of this order;
- (h) \$30,000 within 48 calendar months of the date of this order;



(i) \$30,000 within 54 calendar months of the date of this order;

(j) \$30,000 within 60 calendar months of the date of this order;

provided that if any instalment is not paid on or before the specified date, the whole of the remaining penalties then outstanding shall become immediately payable.

19. Pursuant to s 224 of the ACL, Ms McCullough pay to the Commonwealth of Australia pecuniary penalties totalling \$40,000 in respect of being knowingly concerned in ABGPages' contraventions of ss 21 (from 1 January 2012), 22 (prior to 1 January 2012) and 29 of the ACL, in instalments as follows:

(a) \$4,000 within 6 calendar months of the date of this order;

(b) \$4,000 within 12 calendar months of the date of this order;

(c) \$4,000 within 18 calendar months of the date of this order;

(d) \$4,000 within 24 calendar months of the date of this order;

(e) \$4,000 within 30 calendar months of the date of this order;

(f) \$4,000 within 36 calendar months of the date of this order;

(g) \$4,000 within 42 calendar months of the date of this order;

(h) \$4,000 within 48 calendar months of the date of this order;

(i) \$4,000 within 54 calendar months of the date of this order;

(j) \$4,000 within 60 calendar months of the date of this order;

provided that if any instalment is not paid on or before the specified date, the whole of the remaining penalties then outstanding shall become immediately payable.

### *Costs*

20. ABGPages and Ms McCullough pay to the applicant, a contribution of \$25,000 towards its costs, in instalments as follows:

(a) \$2,500 within 6 calendar months of the date of this order;

(b) \$2,500 within 12 calendar months of the date of this order;

(c) \$2,500 within 18 calendar months of the date of this order;

(d) \$2,500 within 24 calendar months of the date of this order;

(e) \$2,500 within 30 calendar months of the date of this order;

(f) \$2,500 within 36 calendar months of the date of this order;

(g) \$2,500 within 42 calendar months of the date of this order;





- (h) \$2,500 within 48 calendar months of the date of this order;
- (i) \$2,500 within 54 calendar months of the date of this order;
- (j) \$2,500 within 60 calendar months of the date of this order;

provided that if any instalment is not paid on or before the specified date, the whole of the remaining costs then outstanding shall become immediately payable.

21. ABGPages and Ms McCullough will be jointly and severally liable for the payment of the costs referred to in Order 20.

Date that entry is stamped: 16 March 2018.

*Warrick Soden*  
Registrar



**Endorsement pursuant to Rule 41.06**

To: ABGPages Pty Ltd (ACN 138 706 251)

Ms Michele Anne McCullough

You will be liable to imprisonment, sequestration of property or punishment for contempt if:

- (a) for an order that requires you to do an act or thing - you neglect or refuse to do the act or thing within the time specified in the order; or
- (b) for an order that requires you not to do an act or thing - you disobey the order.



**Schedule**

No: QUD931/2016

Federal Court of Australia  
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Division: General

Second Respondent      MICHELE ANNE MCCULLOUGH

**ASSISTED DISPUTE RESOLUTION**

Applicant                      AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Respondent                      ABG PAGES PTY LTD ACN 138 706 251

Second Respondent      MICHELE ANNE MCCULLOUGH