



Coles to pay \$2.5m for misleading "Baked Today" and "Freshly Baked In-Store" bread promotion

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The Federal Court has ordered Coles Supermarkets Australia Pty Ltd (Coles) to pay penalties of \$2.5 million for making false or misleading representations and engaging in misleading conduct in relation to the promotion of its par baked bread products, in proceedings brought by the Australian Competition and Consumer Commission.

The products were promoted as "Baked Today, Sold Today" and in some cases "Freshly Baked In-Store", when they were in fact partially baked and frozen off site by a supplier, transported and 'finished' at in-store bakeries within Coles supermarkets.

In imposing these penalties, Chief Justice Allsop said "The contravening conduct in this case is substantial and serious. Notwithstanding the absence of any specific evidence as to loss or damage by a consumer or a competitor, it is clear that the significant potential to mislead or deceive and thus to damage competitors, the duration of the conduct, and the fact that the goods in relation to which the impugned phrases were used were "consumer staples" indicate that the objective seriousness of the offending conduct was considerable".

His Honour also noted, "The evidence before the Court showed that Coles had engaged in the campaign with the clear purpose of improving its market share vis-à-vis its competitors, being bakeries such as Bakers Delight...It set out to do so by engaging in the conduct that, in fact, breached the Australian Consumer Law".

"This penalty sends a strong message to companies that they should not use broad phrases in promotions that are deliberately chosen to sell products to consumers but which are likely to mislead consumers," ACCC Chairman Rod Sims said.

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Written by ACCC

“As the Chief Justice pointed out, it is important that sellers in the market recognise that consumers are entitled to reliable, truthful and accurate information”

“The ACCC took this action because it was concerned that Coles’ “Baked Today, Sold Today” and “Freshly Baked In-Store” claims about its par baked bread were likely to mislead consumers. The conduct also placed independently-owned and franchised bakeries that entirely bake bread from scratch each day at a competitive disadvantage,” Mr Sims said.

Coles’ conduct was part of a nationwide campaign that was promoted in 637 Coles supermarkets. “Baked Today, Sold Today” was used extensively on packaging for par baked products over a three year period. During this time, Coles sold a significant number of par baked products and generated substantial revenue from these sales.

In September 2014, the Court declared that by using the phrase “Baked Today, Sold Today”, Coles represented to customers that certain bread products were entirely baked on the day on which they were offered for sale, when this was not the case, in contravention of the Australian Consumer Law (ACL).

The Court also declared that by using the phrases “Freshly Baked In-Store”, “Freshly Baked” and “Baked Fresh”, Coles had represented that certain bread products were baked from fresh dough, entirely baked on the day on which they were offered for sale and had been entirely baked in the Coles in-store bakery, when this was not the case and in contravention of the ACL.

At that time, the Court ordered that Coles:

- be restrained for a period of three years from making any representation on packaging, signage, website or other promotional material that bread products were entirely baked on the day of sale or were baked from fresh dough when this was not the case; and
- place a corrective notice on its website and in its in-store bakeries.