

ADDENDUM: \$410,000 FINE FOR MISLEADING, DECEPTIVE & UNCONSCIONABLE CONDUCT: BELLE GIBSON CASE

In an article on 18 May 2017 we reported on the Belle Gibson case [\[click here\]](#). For the principal case [\[click here\]](#) and for the Federal Court's then Orders [\[click here\]](#). The Federal Court found that Gibson "a wellness blogger" had made false claims about suffering brain cancer, rejecting conventional treatment but claimed she was cured by "natural" methods. In addition, the Court found that she falsely claimed to have donated a substantial part of her revenue from her "wellness" activities such as a "wellness blog", the Whole Pantry app and a "wellness" book advance.

We noted in our website article that the penalties were yet to be determined by the Federal Court. Those penalties have now been determined by the Federal Court on 28 September 2017 at \$410,000 [*Director of Consumer Affairs Victoria v Gibson (No 3) [2017] FCA 1148* [click here](#)]. In addition, Gibson had previously been ordered to pay \$30,000 in legal costs to the Director of Consumer Affairs Victoria.

The action by the Director of Consumer Affairs Victoria was brought against Gibson, and her company, Inkerman Road Nominees Pty Ltd (in liquidation), formerly Belle Gibson Pty Ltd. Gibson was the sole shareholder and sole Director of her company. The penalties were levied against Gibson personally as the Court considered there was little point in levying penalties against a company in liquidation.

Gibson was fined for 5 separate breaches of the Australian Consumer Law totalling \$410,000 which included:-

- falsely claiming that proceeds from the sale of the Whole Pantry app were donated to charity: \$90,000;
- falsely claiming to have donated the proceeds from the launch of the Whole Pantry app: \$50,000;
- falsely claiming to have donated proceeds from a 2014 mothers day event: \$30,000;

- falsely claiming to have donated proceeds from other company profits to charity: \$90,000; and
- falsely claiming to have donated all of the proceeds of app sales for one week to the family of Joshua Schwarz (a boy who had an inoperable brain tumour): \$150,000.

The Court considered the gravest of breaches was the unconscionable conduct resulting from the false claims regarding donations to the Schwarz family who were enduring grave family circumstances.

The Director of Consumer Affairs Victoria also sought an order that Gibson place an advertisement in the Herald Sun (Melbourne) and the Australian newspapers informing the public of the penalties imposed. The Court declined to grant this order principally as it considered that such an order would serve little purpose given the publicity that the case had already attracted and that the penalties would also attract.

Interestingly, the Director of Consumer Affairs Victoria did not seek an order, which was available under the legislation, for the Director to place such an advertisement.

It was previously noted that Gibson did not appear nor was she represented at the earlier hearings and failed to attend the Federal Court when the penalty orders were delivered.

However, the Court did grant Gibson leave to apply to the Court, for an order “on or before 4pm on 5 October 2017”, that she pay the penalties imposed “....by way of instalments”

An application for payment by instalments had to be “supported by Affidavit setting out a proposed repayment schedule, the reason why an order for instalments should be made and[Gibson’s] financial circumstances.”

In addition, the Director of Consumer Affairs Victoria had previously taken action against publisher Penguin which paid an advance to Gibson for her book and published in mid 2013. The action was withdrawn, but Penguin was fined \$30,000 because it sold and promoted the book by “making false and misleading representations”.

This hopefully closes a rather unfortunate set of circumstances.

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