

No Rewards for Pyramid Selling

The NSW Supreme Court has ruled that liquidators of companies being wound up can reject a creditor's claim for a debt on the grounds of illegality.

The court found that the liquidator of the company, Giraffe World Australia Pty Ltd (in liquidation), could refuse a claim by creditors for commission income earned from illegal pyramid selling activity. The pyramid selling conduct had been declared a breach of the *Trade Practices Act 1974* by the Federal Court in 1999, following Australian Competition and Consumer Commission court action for contraventions of the referral and pyramid selling provisions in sections 57 and 61 of that Act.

Justice Barrett commented: "There is in each section an objective of protecting the public ... I consider the position in this case to be that the effectiveness of contracts to pay commissions ... is so inconsistent with the attainment of the purposes of the section as to indicate a legislative intention that such effectiveness is to be denied".

ACCC Chairman, Mr Graeme Samuel said the decision confirmed the liquidator's right to deny claims for money derived from illegal activities, such as Trade Practices Act contraventions.

"It makes clear that pyramid selling conduct will not be rewarded in the liquidation process – ill-gotten gains will not be recoverable when a company is wound up".

The ACCC acknowledges the assistance of the Liquidator, Ferrier Hodgson, in seeking judicial advice from the court to clarify this area of the law.

Further information

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BACKGROUND

In August 1999, the Federal Court found that Giraffe World had contravened the *Trade Practices Act 1974* for referral and pyramid selling and for misleading consumers about the 'health' product it marketed – the 'negative ion' mat. The Federal Court found the mat did not produce negative ions or health benefits, as the company had claimed. The case was a good example of the ACCC's focus on vulnerable and 'at risk' consumers – consumers susceptible to 'get rich quick' schemes and those suffering illness who abandoned traditional medical treatment in the hope that the ion mat would provide a miracle cure. The mat was promoted through a pyramid selling scheme and as the scheme saturated the market, new membership levels dropped, and the company was wound up. The liquidator sought judicial advice from the Supreme Court of NSW (Equity Division) on the validity of claims by members of Giraffe World for commissions earned from referral and pyramid selling in breach of the *Trade Practices Act 1974*. The ACCC accepted the liquidator's invitation to intervene in the proceedings to make submissions that such claims should be denied by the liquidator on the grounds of illegality and public policy.

