

Article Information

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Sellers Beware - Price List Increase misrepresentations result in \$520,000 pecuniary penalty

In April, the ACCC successfully obtained orders, including an injunction, the payment of pecuniary penalties, the publishing of a notice in The Australian newspaper, and the establishment of a compliance program against Actrol Parts Pty Limited (Actrol) in relation to representations made by Actrol when notifying customers of price increases.

Actrol is a wholesale supplier of refrigerant gas, including hydrofluorocarbons (HFCs). The HFCs were imported into Australia and that importation became subject, from 1 July 2012, to an equivalent carbon price levy (ECPL).

It was well publicised within the refrigerant gas industry from about April 2012 that the costs of HFCs would increase due to the ECPL. At about that time, Actrol developed a strategy in relation to the price of HFCs. In essence that strategy was:

- to ensure Actrol's bulk storage facilities for HFCs were full prior to the 1 July 2012 introduction of the ECPL
- to accept a proposal from a supplier of HFCs by which Actrol would be supplied with HFCs at a price equal to raw product costs plus half of an amount equivalent to the ECPL. Those supplies would be imported before 1 July 2012 for supply after that date and would amount to about six months' supply
- Actrol would announce an increase to its price lists for HFCs in June 2012, to be implemented from 1 July 2013 such that its average selling prices for those HFCs would increase by the ECPL plus 15 or 20 percent.

In June 2012, Actrol sent a letter via email to approximately 8,000 of its customers and published the letter on its website. It introduced the increased prices as follows:

"Dear Customer

Due to changes in input costs and general market conditions, Actrol wishes to advise List pricing for these refrigerants commencing 1st July 2012..."

It was an agreed fact that the letter contained two relevant representations. The first was that the price increases were due to changes in input costs and general market conditions. That was expressed in the opening paragraph of the letter. That representation was false, misleading or deceptive, or likely to mislead or deceive, because the price increases were not solely due to the changes, and Actrol's costs had not increased to the extent of the price increases and were not expected to increase to that extent of the price increases until about mid-2013. The Court found that the price increases were as a result of Actrol's efforts to avoid the impacts of the ECPL and to increase its profits on the HFCs.

The second representation contained in the letter was that the price increases were due to the introduction of an ECPL under the carbon tax scheme. That representation was implied from the contents of the letter, in light of the surrounding circumstances of the price increases, namely the timing of the price increases coinciding with the introduction of the ECPL, together with it being well known that the price of HFCs would increase because of the ECPL and the general expectation within the industry that the price of HFCs would increase from July 2012.

That representation was false for the same reasons as the first representation.

Actrol ultimately admitted that its conduct contravened both sections 18 and 29(1)(i) of the Australian Consumer Law.

The case provides a warning to sellers of goods and services which seek to explain their price increases to customers. Although legitimate strategies can be put into place to insulate against expected negative impacts on prices,

and to increase profit margins, sellers must ensure that if explanations are given for price increases they are accurate, and do not mislead customers or prospective customers. Sellers should bear in mind that not only will the ACCC be keeping an eye out for misleading condu