



## Full Federal Court orders \$6 million penalty for Nurofen Specific Pain products

16 December 2016

The Full Federal Court has upheld an appeal by the Australian Competition and Consumer Commission against the penalty imposed on Reckitt Benckiser (Australia) Pty Ltd for contravening the Australian Consumer Law (ACL).

The Full Court ordered Reckitt Benckiser to pay a revised penalty of \$6 million (up from \$1.7 million) for making misleading representations about its Nurofen Specific Pain products.

“This is the highest corporate penalty awarded for misleading conduct under the Australian Consumer Law,” ACCC Chairman Rod Sims said.

The Full Court found that the initial penalty of \$1.7 million was manifestly inadequate given the need for deterrence and the substantial consumer loss suffered.

“The ACCC welcomes this decision, having originally submitted that a penalty of \$6 million or higher was appropriate given the longstanding and widespread nature of the conduct, and the substantial sales and profit that was made,” Mr Sims said.

In their joint decision, Justices Jagot, Yates and Bromwich stated: “The objective of any penalty in this case must be to ensure that Reckitt Benckiser and other ‘would-be wrongdoers’ think twice and decide not to act against the strong public interest”.

“The ACCC will continue to advocate for higher penalties for breaches of Australia’s consumer laws to ensure that they act as an effective deterrent and are not simply viewed as a cost of doing business,” Mr Sims said.

### Background

In December 2015, following admissions by Reckitt Benckiser, the Court found that Reckitt Benckiser engaged in misleading or deceptive conduct between 2011 and 2015 by making representations on its website and product packaging that Nurofen Specific Pain products were each formulated to specifically treat a particular type of pain, when this was not the case.

In fact, each Nurofen Specific Pain product contains the same active ingredient, ibuprofen lysine 342mg, which treats a wide variety of pain conditions and is no more effective at treating the type of pain described on its packaging than any of the other Nurofen Specific Pain products.

On 29 April 2016, the trial judge Justice Edelman ordered Reckitt Benckiser to pay a penalty of \$1.7 million for making misleading representations about its Nurofen Specific Pain products.

The ACCC appealed the Federal Court’s decision on 23 May 2016.

#### Update: 5 April 2017

Following the Full Court’s decision, Reckitt Benckiser applied for special leave to appeal to the High Court of Australia on a number of grounds, including that the Full Court had erred in its assessment of consumer loss and in finding that the original penalty was manifestly inadequate.

On 5 April 2017, the High Court dismissed Reckitt Benckiser’s special leave application with costs.

The ACCC has been advocating for increased penalties under the current review of the Australian Consumer Law. This review formally commenced on 31 March 2016 and a final report is expected by March 2017.

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