

This guide is an extract from “Australian Consumer Logo Law”.

This guide was developed by:

- Australian Competition and Consumer Commission
- Australian Capital Territory Office of Regulatory Services
- Australian Securities and Investments Commission
- Consumer Affairs Victoria
- Consumer Affairs and Fair Trading Tasmania
- New South Wales Fair Trading
- Northern Territory Consumer Affairs
- Office of Consumer and Business Affairs South Australia
- Queensland Office of Fair Trading
- Western Australia Department of Commerce, Consumer Protection

Representations about country of origin

3.1

Summary

Businesses must not make false or misleading representations about the country of origin of goods.

A representation about country of origin includes words, a picture or both, either:

- attached to the goods - for instance, on a label
- in promotional material linked to the goods.

Claims about country of origin include:

- ‘made in’ a specified country
- ‘produce of’, ‘product of’ or ‘produced in’ a country
- use of a prescribed logo
- claims that goods, or ingredients or components were ‘grown in’ a country.

The ACL sets out criteria for businesses to follow when making claims about the country of origin of goods.

ACL reference: Sections 254-258

What is a ‘country of origin’ representation?

3.2 Businesses must not make false or misleading representations about the country of origin of goods.

3.3 A representation about country of origin can include words, a picture or both, indicating that goods were made, produced or grown in a particular country.

3.4 The representation can be either:

- attached to the goods - for instance, on a label
- in promotional material linked to the goods.

3.5 Words or pictures that are an essential part of the goods are not necessarily a representation about country of origin.

3.6 For example:

A t-shirt with a 'Made in Australia' label makes a representation about country of origin. A t-shirt emblazoned with the word 'Australia' as part of its design, does not.

3.7 A business must ensure absence of a country of origin representation does not imply one, because of other statements or signs associated with a good.

3.8 For example, a person may buy a 'genuine Turkish rug' believing it is made in Turkey, when it is actually made in China.

3.9 Representations about country of origin include:

- 'made in' a specified country
- 'produce of', 'product of' or 'produced in' a country
- use of a prescribed logo
- claims that goods, or ingredients or components, were 'grown in' a specified country.

3.10 The ACL provides certain legal protections for businesses that make country of origin representations, provided they meet criteria set out in the law.

Criteria for country of origin claims

3.11 The ACL sets out certain criteria for claims about the country of origin of goods.

3.12 The criteria apply to claims about *country*, not *region* - for example, they do not apply to 'made in Tasmania' or 'made in California'

3.13 If a business is accused of making a false or misleading claim about country of origin, it must point to evidence that the claim meets the criteria set out in the ACL.

'Made in' claims

3.14 For a business to claim goods are 'made in' a particular country:

- the goods must be *substantially transformed* in that country, and
- 50 per cent or more of the *cost of producing or manufacturing* the goods must be incurred in that country.

Substantial transformation

3.15 This means the product undergoes a fundamental change in the country represented. The changes can be to the product's appearance, operation or purpose.

3.16 Processes that lead to substantial transformation include:

- processing imported and Australian ingredients into a finished food product, such as the production of a cake from imported spices, fruit and flour and Australian sugar
- production of a newspaper using imported ink
- moulding sheet metal into a car panel
- manufacturing flour from wheat.

3.17 It does not include:

- reconstituting imported fruit juice concentrate into fruit juice for sale - whether or not Australian water, sugar, preservatives and packaging were used
- assembling imported components into household or other items - for example: white goods, furniture or electronic goods.

Penalties

3.24 Making false or misleading representations is an offence.

The maximum fine is \$220,000 for an individual and \$1.1 million for a body corporate. Civil penalties for the same amount may apply.

3.25 Before prosecution, consumer protection agencies can:

- require a business to provide information that will support claims or representations made about goods or services
- accept court-enforceable undertakings
- issue public warning notices.

Business responsibilities

4.7 Suppliers, manufacturers, importers, distributors, hirers and retailers must:

- ensure goods and services they supply comply with relevant information standards, if sold within Australia
- be familiar with information standards relevant to those goods and services.

4.8 For example:

A retailer sold imported dresses not properly labelled with instructions for washing, dry-cleaning and ironing. The retailer was fined because the labels did not contain all instructions required by the information standard.

Legal reference: Hamlyn v Mark Foy's Pty Ltd (1982) ATPR 40-316

Penalties

4.9 Supplying goods and services that do not comply with an information standard is an offence.

4.10 The maximum penalty is \$1.1 million for a body corporate and \$220,000 for an individual. Civil penalties for the same amount may apply.

4.11 Breaching an information standard can also lead to injunctions, personal damages, compensatory orders, corrective advertising orders and adverse publicity orders.

Glossary and abbreviations

Glossary

Term	Definition
acquire	to take possession of something by hiring, leasing or buying it, and by exchange or gift
body corporate	includes a company registered under the <i>Corporations Act 2001</i> , an incorporated association, a cooperative or an owners' corporation.
buy	see 'acquire'
consumer	<p>a person who buys:</p> <ul style="list-style-type: none"> • any type of goods or services costing up to \$40,000 (or any other amount stated in the ACL Regulations) • goods or services which would normally be for personal, domestic or household use, or • goods which consist of a vehicle or trailer used mainly to transport goods on public roads. <p>Australian courts have said that the following are not normally used for personal, domestic or household purposes:</p> <ul style="list-style-type: none"> • an airseeder • a large tractor • a reduction photocopier
consumer goods	goods intended, or likely, to be used for personal, domestic or household use or consumption
goods	<p>includes, among other things:</p> <ul style="list-style-type: none"> • animals • gas, electricity and water • computer software • second-hand goods • ships, aircraft and other vehicles • minerals, trees and crops, whether on or attached to land • any component part of, or accessory to, goods
liability	an obligation to put right a problem - for example, fixing a defective product, providing compensation or taking other action

manufacturer	<p>includes a person who:</p> <ul style="list-style-type: none"> grows, extracts, produces, processes or assembles goods holds him/herself out to the public as the manufacturer of goods causes or permits his/her name, business name or brand mark to be applied to goods he/she supplies permits him/herself to be held out as the manufacturer by another person, or imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia
product-related services	<p>means a service for or relating to:</p> <ul style="list-style-type: none"> the installation of consumer goods of a particular kind the maintenance, repair or cleaning of consumer goods of a particular kind the assembly of consumer goods of a particular kind the delivery of consumer goods of a particular kind. <p>Without limiting any of the above, the definition also includes any other service that relates to the supply of consumer goods of that kind</p>
regulator	the Australian Competition and Consumer Commission or state/territory consumer protection agencies
services	<p>duties, work, facilities, rights or benefits provided in the course of business, for example:</p> <ul style="list-style-type: none"> dry cleaning installing or repairing consumer goods providing swimming lessons lawyers' services
supplier	someone who, in trade or commerce, sells goods or services and is commonly referred to as a 'trader', 'retailer' or 'service provider'
supply	<p>includes:</p> <ul style="list-style-type: none"> in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and in relation to services – provide, grant or confer

Abbreviations

ACL	Australian Consumer Law
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission

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