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Debt Collector Engaged in Harassment and Coercion

The Federal Court, Perth has found that Cash Return Mercantile Pty Ltd (Cash Return), a debt collection agency, and its former agent, Ms Sharyn McCaskey engaged in undue harassment, coercion and misleading conduct while collecting debts from consumers. The Federal Court ruling follows action taken by the Australian Competition and Consumer Commission against Cash Return and Ms McCaskey.

"This is the first case taken by the ACCC under section 60 of the Trade Practices Act 1974 prohibits the use of physical force, undue harassment or coercion by a corporation (or its servants or agents) in relation to the payment by a consumer for goods or services", ACCC Chairman, Professor Allan Fels, said today. "Section 52 prohibits misleading and deceptive conduct".

Justice French found that Ms McCaskey and Cash Return had, while collecting debts from consumers:

- made an excessive number of telephone calls to debtors;
- adopted a threatening, aggressive and abusive manner in those telephone calls; and
- misled debtors and others about debt recovery procedures and the consequences of non payment of debts.

"The outcome provides some much needed case law on debt collection. The ACCC action also serves as a warning to debt collectors and suppliers that consumers are protected by the Act from unfair or intimidating behaviour".

Justice French said that the recovery of unpaid debts can be pursued with firmness, determination and civility without resorting to bullying, bluff, misrepresentation or stand-over tactics. Justice French found determined that a supplier of goods or services or a debt collector, in deciding upon the approach to be taken to a debtor, should ask the question: "Are the content, the timing, the location, and other circumstances of my demand for payment reasonably calculated to remind the debtor of his or her obligations, specify a time within which it must be satisfied and indicated that civil proceedings for recovery will be instituted if payment is not made".

Justice French went on to say that "if the frequency, nature, or content of the approaches and communications associated with them is such that they are calculated to intimate or demoralise, tire out or exhaust a debtor rather than convey the demand and associated legitimate threat of proceedings, the harassment will be undue".

Justice French commented that useful examples of situations that may give rise to a contravention of the Act are set out in the ACCC guidelines, Debt Collection and the Trade Practices Act, that is available on the Internet at <http://www.accc.gov.au> and from all ACCC offices.

Further information

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