



**Sharon Grierson MP
Federal Member for Newcastle**

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ACCC Court Action

Ms GRIERSON (Newcastle) (12.17 pm)—I note the member for Chisholm's earlier comments about the role of members of parliament. I suppose the case that I wish to talk about today illustrates what individual members of parliament do and can achieve. Two years ago I raised in the House a constituent's case to do with online marketing and suspected predatory behaviour against that constituent's small business, Stickbeek, by *Trading Post*, the online marketing arm of Sensis and Telstra. My constituent had found that when potential customers were searching on Google for his brand, Stickbeek, to access car sales, a search page would come up with Stickybeek's car listings. But on the right hand side of the screen the word 'Stickybeek' would come up, spelt in the same corrupted way as my constituent's registered trademark—with a double 'e'. If you clicked on that word on that page, you would be taken straight to *Trading Post's* site and their list of cars for sale.

My constituent was concerned about a decline in his business from loss of sales and sought my assistance. On my advice, knowing full well that to take on Telstra through the law courts would be a horrendous task for a small businessperson, the complaint was taken to the ACCC for a suspected breach of the Trade Practices Act. The enforcement committee of the ACCC investigated the actions of both Google and *Trading Post* in relation to my constituent's complaint. Their judgement was that the *Trading Post* conduct may have contravened sections 52 and 53D of the Trade Practices Act and therefore may have constituted misleading or deceptive conduct and misrepresentation of an affiliation or sponsorship that *Trading Post* did not actually have in suggesting that it was indeed Stickybeek. However, the ACCC concluded that, as the offending practice had ceased and as they had received undertakings from *Trading Post* to that effect, there would be no further action. In the ACCC's investigations Google were approached. Google stated that as soon as they were told of any such problems they deleted the offending keyword or sponsored link but took no further responsibility for the actions of its customers. My constituent and I were both very disappointed with this outcome. A rap on the knuckles for big business preying on small business did not seem a satisfactory or adequate outcome.

Two months after that decision in 2005, further complaints were made by Newcastle car sales companies indicating that *Trading Post* was again using the names of competitors in the title of its sponsored links. These competitors were Newcastle companies, Kloster Ford and Charlestown Toyota. I pay tribute to the involvement of Michael Garnham of Stickybeek, my original constituent, for again bringing that repeat

practice to the public attention. As a result, the ACCC undertook new investigations which ultimately led to the ACCC enforcement committee recommending the institution of legal proceedings against *Trading Post* and, interestingly, against Google. The ACCC in its decision clearly noted *Trading Post's* failure to meet the commitments it had made to the ACCC in my constituent's original case.

On 11 July 2007, the ACCC instituted proceedings against *Trading Post* and Google in the Federal Court, seeking declarations that the two companies contravened the Trade Practices Act and seeking injunctions prohibiting either party from engaging in similar conduct in future. The purpose of this action, according to the ACCC, is to clarify the application of the law in a new and expanding advertising medium and obtain a legal precedent that the use of a competitor's business name in the title of sponsored links amounts to a contravention of the Trade Practices Act.

This is an extremely important case. It is one that tests a new area of law, a new area of marketing behaviour and a global area of marketing behaviour. I applaud the ACCC for taking this brave action. It is one that has captured attention around the world. The *Wall Street Journal* condemns the ACCC for this action, claiming that everyone knows that, if you use Google, you will find an advertisement on every page and, therefore, you just have to accept that. But you do not expect to see a registered trademark being used, just as you would not expect in the traditional markets to set up a business and call it David Jones or a supermarket and call it Coles. The *Wall Street Journal* fears that this will be disruptive to the market, that it will create a monster, but I think it is a brave action and it is not the first action taken against Google. As policymakers, we have concerns about the responsibility of search engines to control predators on children, paedophiles and pornography. Where does the responsibility lie? I applaud the ACCC for this test case and look forward with interest to its outcomes. *(Time expired)*