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CONCISE STATEMENT

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL**

NO QUD OF 2023

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**

Applicant

MEG'S FLOWERS PTY LTD (ACN 162 021 696)

Respondent

A. INTRODUCTION

1. In this proceeding, the ACCC alleges that during the period between at least 1 January 2019 to 10 February 2022 (the **Relevant Period**), the Respondent (**Meg's Flowers**), which is an online floristry business, made false or misleading representations and engaged in misleading or deceptive conduct by representations published on its websites and in Google advertisements which represented that Meg's Flowers was a local florist, located in a specific town, suburb or locality in Australia when that was not the case. In fact, orders placed with Meg's Flowers were fulfilled from any one of 13 warehouses used by Meg's Flowers, or, in some instances, by sub-contractors.
2. By making these representations, Meg's Flowers contravened ss 18, 29 and 33 of the Australian Consumer Law (**ACL**), being Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

3. Meg's Flowers operated a predominantly warehouse-based flower delivery service. It did not directly maintain any local shopfront accessible to customers. It received flower orders by telephone, or through a large number of websites. Meg's Flowers used Google advertisements to promote its websites to consumers.
4. It was Meg's Flowers' business practice to generate town, suburb or locality-specific websites, which incorporated elements (including at least the domain name element, the first location heading element and the local copyright element) referring to a specific town, suburb or locality for locations in which it had no physical presence.
5. During the Relevant Period, Meg's Flowers made statements on seven location-specific websites (the **named websites**), referring to Ashgrove, Queensland; Caboolture, Queensland; Ellenbrook, Western Australia; Lane Cove, New South Wales; Mawson

Filed on behalf of the Applicant, Australian Competition and Consumer Commission

File ref: 21009045

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Lakes, South Australia; Sunbury, Victoria and Tewantin, Queensland. Each of these named websites included a combination of at least five of the following elements:

- a. a reference to the relevant town, suburb or locality name in the domain name (the domain name element);
 - b. the name of the relevant town, suburb or locality and a phone number with the area code of the state or territory the town, suburb or locality is located in at the top of the page (first location heading element);
 - c. a photograph of a florist's store with a scooter branded Meg's Flowers (photograph element);
 - d. the heading, "[relevant town, suburb or locality] Florist" (second location heading element);
 - e. geographical details about the relevant town, suburb or locality (location description element);
 - f. the statement, "direct from [...] our [relevant town, suburb or locality] florist" (location delivery element);
 - g. the statement "the finest quality flowers in [relevant town, suburb or locality]" (location of flowers element);
 - h. the statement "It's a local approach" (local approach element);
 - i. the statement "our fantastic local service" (local service element); and
 - j. the copyright notice "© [Year] – Meg's Flowers [relevant town, suburb or locality name]" (local copyright element).
6. **Annexure A** shows the Meg's Flowers named website for Ashgrove, Queensland as it appeared during the Relevant Period. This website included all ten of the elements set out in paragraph 5.
 7. **Annexure B** sets out, for each named website, the relevant suburb, URL and period alleged, and indicates which of the elements set out in paragraph 5 was included on the named website. By including a combination of some of the elements set out in paragraph 5 on each named website, Meg's Flowers represented that flowers ordered from Meg's Flowers originated from a florist located in the town, suburb or locality referred to in the website (the **website local origin representation**), when this was not the case.
 8. Meg's Flowers also published 149 other town, suburb or locality specific websites (**other websites**). During the Relevant Period, each of the other websites included at least the following elements:
 - a. the domain name element;
 - b. the first location heading element;
 - c. the local copyright element; and

d. the location description element.

9. By including each of the elements referred to in paragraph 8 on each of the Meg's Flowers other websites, Meg's Flowers made the website local origin representation.

Google Advertisements

10. During at least the Relevant Period, Meg's Flowers also used the Google advertising platform. Meg's Flowers provided information to the platform and the platform generated advertisements that were displayed as search listings.
11. Where a user of the Google search engine searched for "[relevant town, suburb or locality] Florist" or "Florist in [relevant town, suburb or locality]" or "Florists in [relevant town, suburb or locality]" or "flower delivery [relevant town, suburb or locality]" or "flowers in [relevant town, suburb or locality]", the search results generated included a sponsored Meg's Flowers advertisement referring to the relevant town, suburb or locality.
12. During the Relevant Period, Meg's Flowers caused 7,462 advertisements to be published for websites relating to 3,649 suburbs, towns or localities (**Meg's Flowers advertisements**), that displayed each of the following elements, supplied and approved by Meg's Flowers:
- a website domain name (**linked local website**), which referred to the town, suburb or locality;
 - a headline, which was in the form "Meg's Florist [relevant town, suburb or locality]" or "Meg's [relevant town, suburb or locality]"; and
 - a reference to "Same Day Local Flower Delivery".
13. By including each of the the elements referred to in paragraph 12 in the advertisements, Meg's Flowers represented that flowers ordered from Meg's Flowers originated from a florist located in the town, suburb or locality referred to in the advertisement (**ad local origin representation**), when this was not the case.
14. Below is an example of a Meg's Flowers advertisement for the Meg's Flowers Ashgrove website:



Meg's Florist Ashgrove | Call us M-F 7am-8pm, Sat 7-4pm
 | Same Day Local Flower Delivery
megsflowersashgrove.com.au/qld/brisbane
 Daily Deliveries of stunning flowers Mon-Sat. Call Us or Order on our Website. Divine and affordable flowers and gifts by passionate florists. Same Day Delivery Mon-Sat.

15. The website local origin representations and ad local origin representations were false, misleading, deceptive or likely to mislead or deceive, because the flowers that were ordered from Meg's Flowers did not originate from a florist located in the town, suburb or locality referred to in the website or advertisement in which the representations were made.

C. SUMMARY OF RELIEF SOUGHT FROM THE COURT

16. The Applicant claims the relief set out in the accompanying Originating Application, which includes declarations, pecuniary penalties, compliance orders, corrective notices, and costs.

D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

17. The conduct alleged above was in trade or commerce and in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services.
18. By reason of the matters described at paragraphs 3 to 15 above, Meg's Flowers:
- a. engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL;
 - b. made false or misleading representation concerning the place of origin of goods in contravention of s 29(1)(k) of the ACL; and
 - c. engaged in conduct that was liable to mislead the public as to the nature or characteristics of goods, in contravention of s 33 of the ACL.

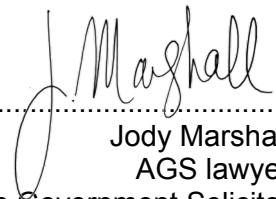
E. ALLEGED HARM

19. The origin representations may have resulted in consumers who sought to shop locally and support a local business purchasing from Meg's Flowers instead of purchasing flowers from a local florist.

F. OTHER

20. The Applicant does not consider the issues in this Concise Statement are suitable for a report by a referee under s 54A of the *Federal Court of Australia Act 1976*.

Date: 29 May 2023



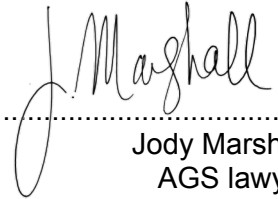
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 Jody Marshall
 AGS lawyer
 for and on behalf of the Australian Government Solicitor
 Solicitor for the Applicant

This concise statement was prepared by Jody Marshall, Senior Executive Lawyer at the Australian Government Solicitor, and was settled by E Bennett SC and C Cunliffe of counsel.

CERTIFICATE OF LAWYER

I Jody Marshall certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 29 May 2023



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Jody Marshall
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant

Annexure A

The screenshot shows the website for Meg's Flowers Ashgrove. At the top, there is a navigation bar with the company name 'meg's flowers' in a circular logo, the address 'Ashgrove (07) 3050 1922', and 'Phone Opening Hours: Mon-Fri: 7am-6pm, Sat-Sun: 8am-2pm'. Below this is a large banner for Valentine's Day featuring two women and a bouquet of red roses, with the text 'Valentine's Day Order your roses today!' and a 'SHOP NOW' button.

The main content area is titled 'Market Specials' and features a vertical sidebar on the left with icons and labels for different occasions: Valentine's Day, Happy Birthday, Condolences, New Baby, Market Specials, Romantic, and All Flowers. The main grid contains 12 flower specials, each with an image, a special offer badge, a name, and pricing.

Special Name	Offer	Original Price	Special Price
lush special	20% OFF SPECIAL	\$79.95	\$64.95
sweetheart with card	FREE CARD SPECIAL	\$78.90	\$74.95
dapper with chocs & card	FREE CHOC & CARD \$10 OFF	\$93.85	\$74.95
dazzle with candle	FREE CANDLE SPECIAL	\$114.90	\$89.95
fanfare with chocs	FREE CHOC SPECIAL	\$97.90	\$89.95
dancer special	SAVE \$10 SPECIAL	\$109.95	\$99.95
peace special	20% OFF SPECIAL	\$153.95	\$122.95
admirer with card	FREE CARD SPECIAL	\$143.90	\$139.95
carnival with candle	FREE CANDLE SPECIAL	\$174.90	\$149.95

At the bottom of the page, there is a photograph of a light blue scooter parked next to several large bouquets of flowers.



Ashgrove Florist

Want to send fresh flowers in Ashgrove? Meg's Flowers can deliver today

Located along Enoggera Creek, the suburb of Ashgrove lies just four kilometres northwest of the Brisbane CBD. Although a predominantly residential area - home to a community of around 13,000 people - there's a good choice of amenities such as several schools and churches, great shopping courtesy of the Paddington Central and Brookside Shopping Centres, and of course Brisbane City's Queen Street Mall. Local dining options include the likes of the Spice Affair Indian Restaurant, The Grove Establishment, and Thai Chinpala Kitchen & Restaurant. Green spaces include the Banks Street Reserve and Corbie Street Park. If you'd like to send fresh flowers in Ashgrove or the surrounding areas such as St Johns Wood, The Gap, or Red Hill, you can count on Meg's Flowers to help. We have beautiful blooms for every possible special occasion, and with same day delivery direct from our Ashgrove florist available six days a week, it's really never been easier to send flowers to someone special.



On our website you'll find that we have conveniently showcased all of our beautiful bouquets and elegant boxed arrangement into tempting floral collections that make it easy for you to choose the Ashgrove florist available six days a week, it's really never been easier to send flowers to someone special.

On our website you'll find that we have conveniently showcased all of our beautiful bouquets and elegant boxed arrangement into tempting floral collections that make it easy for you to choose the perfect flowers for everything from birthdays to new babies. You can always feel confident that your lucky recipient will receive a selection of the finest quality flowers in Ashgrove - beautiful blooms that are harvested a matter of hours before they are delivered. It's a local approach that means that your thoughtful gesture will be able to be enjoyed for longer. We have to admit to being really proud of being able to offer you such a fantastic choice of fresh flowers, but we don't stop there - we've got a great choice of add-on gifts for you too. Choose from a superb selection of treats that includes everything from delicious gourmet chocolates and stylish keepsake vases to plush teddy bears and fun helium balloons. There really is something to suit every possible occasion, taste, and budget, so don't miss the chance to make even more of an impact on your special someone.

When you've chosen what you'd like, you can give us a quick call to let us know on (07) 3050 1922. If you prefer to order online - you can do so in a matter of moments direct from our secure website or via our handy mobile app. If you give us a shout before 2pm we can even deliver your chosen flowers and gifts to the home or workplace of your lucky chosen recipient that very same day - or even direct to any of the local hospitals. If you prefer to have things organised a little sooner, you're also most welcome to order in advance - up to twelve months ahead of your occasion. We offer a 100% customer satisfaction guarantee with every order for flowers in Ashgrove, so you can try out our fantastic local service in complete confidence. Who will you spoil with beautiful blooms today?

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Contact Us

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