

Our reference: 1707131
Contact Officer: Dean Cohen
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**Australian
Competition &
Consumer
Commission**

26 March 2014

Ms Beatrice Ludwig
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Dear Ms Ludwig,

I refer to your complaint regarding Monsanto Australia Limited and Monsanto International Pty Ltd (**Monsanto**). In your complaint you allege that Monsanto is misleading consumers by claiming to support *sustainable agriculture*.

Specifically, you allege that Monsanto's genetically modified (**GM**) 'Roundup Ready' system is unsustainable as incorrect farming practices can result in cropping areas being irreversibly damaged as a result of monoculture.

Assessment

As you are aware, the ACCC is a statutory authority with responsibility for enforcing the *Competition and Consumer Act 2010 (CCA)*, the object of which is to enhance the welfare of all Australians through the promotion of competition and fair trading provisions for consumer protection. Schedule 2 of the CCA is the *Australian Consumer Law (ACL)* which contains provisions prohibiting misleading and deceptive conduct.

Section 18 of the ACL is a broad provision which prohibits a person, in trade or commerce, from engaging in conduct which is misleading or deceptive, or which is likely to mislead or deceive. Whether particular conduct is misleading or deceptive is a question of fact to be determined in the context of evidence as to the alleged conduct and to the relevant surrounding facts and circumstances.

Section 29(1)(g) of the ACL is a more specific provision which prohibits a person, in trade or commerce, from making a false or misleading representation that goods have particular performance characteristics or benefits.

As you are also likely aware, the ACCC does not provide legal advice and none of the comments that follow should be taken as such. The purpose of this letter is to provide an overview of the ACCC's investigation in response to your complaint.

Definition of Sustainable Agriculture

General characteristics

In reviewing your complaint, this office has undertaken research into the definition of *sustainable agriculture* which I understand is not subject to a strict set of defining characteristics rather it extends to numerous areas. I further understand that these areas may include (but are not limited to) agricultural practices that improve or maintain:

- the economic viability of agricultural production;
- the social viability and well-being of rural communities;
- the ecologically sustainable use of Australia's biodiversity;
- the natural resource base; and/or
- ecosystems that are influenced by agricultural activities.

Monsanto

Monsanto, on its website, identifies its future goals of *sustainable agriculture* to promote "Producing More, Conserving More and Improving Lives"¹. Monsanto states *sustainable agriculture* is required in the future to ensure that increased crop yields appropriately counteract a growing population. Monsanto have placed importance on reducing the impacts on natural resources through particular agricultural practices.

I am of the view that Monsanto clearly identifies what it considers to be *sustainable agriculture* and they have also appropriately represented the broad general characteristics of *sustainable agriculture*.

Direction of Representations

I believe that statements made by Monsanto are directed toward consumers of Monsanto products, notably farmers with agricultural and environmental expertise. Consumers with such expertise are more likely to understand and accept the characteristics of *sustainable agriculture* as outlined by Monsanto.

Subsequently, I consider that consumers of Monsanto products are unlikely to be misled by representations made on Monsanto's website.

Conclusion

In assessing this matter, I have concluded that the conduct of Monsanto is unlikely to be misleading or deceptive and therefore intend to take no further action at this time in proceeding with this complaint. The ACCC may reconsider the matter at a later stage should further information be provided.

¹ <http://www.monsanto.com/global/au/whoweare/Pages/sustainable.aspx>

Whether particular conduct contravenes the CCA is ultimately a matter for a Court to determine. The CCA confers the right of private action on those who believe they have suffered loss or damage as a result of the offending conduct. My decision does not preclude you or any other party from seeking remedy against Monsanto under the CCA.

Should you have any further enquiries, please contact Dean Cohen on (08) 9325 0616.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sonja Pasovac', with a small dot at the end.

Sonja Pasovac
Assistant Director
Enforcement Group – Western Australia