

Employsure to pay a penalty of \$1 million for misleading Google Ads

Date

29 November 2021

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The Federal Court has imposed a penalty of \$1 million on workplace relations advisor Employsure Pty Ltd for breaching the Australian Consumer Law by making false or misleading representations in its Google Ads, in proceedings brought by the ACCC.

In August 2021, the Full Federal Court [unanimously upheld](#) an appeal by the ACCC, finding that Employsure made false or misleading representations that it was, or was affiliated with, a government agency, when that was not the case.

The Google Ads containing these representations appeared in response to search terms such as ‘fair work ombudsman’ and were published between August 2016 and August 2018, with headlines such as ‘Fair Work Ombudsman Help – Free 24/7 Employer Advice’ and ‘Fair Work Commission Advice – Free Employer Advice’.

The ACCC submitted that a penalty of \$5 million was appropriate in order to send a strong deterrence message and given publication of the Google Ads over a prolonged period.

The Court imposed a penalty of \$1 million based on Justice Griffiths’ earlier finding that the conduct was not deliberate and his acceptance of Employsure’s evidence that by the time a consumer signed up with Employsure, its internal processes meant consumers should have been aware that the services were provided by Employsure, and that it was not affiliated with or endorsed by the government.

“We consider that misrepresenting a business as being part of, or affiliated with, the government is a particularly serious breach of our consumer law, and publication of the Google Ads, including over a prolonged period of time, points to a significant compliance failure,” ACCC Chair Rod Sims said.

“The ACCC took this action following over 100 complaints about Employsure, including from small businesses who claimed they had contacted Employsure after viewing a Google Ad and thought they were dealing with a government agency.”

“The ACCC was particularly concerned that consumers may have entered into contracts with Employsure for a significant fee because they believed the advertised services were to be

provided by the official government authority, or a government affiliate, but this was not accepted by the Court in determining the penalty,” Mr Sims said.

The ACCC also sought an order restraining Employsure from misrepresenting that it is, or is an affiliate of, the government in the marketing and provision of its service for a period of five years. The judge did not consider that an injunction was appropriate, as the conduct ceased more than three years ago and in his view was unlikely to reoccur.

The ACCC will carefully consider the judgment.

Background

Emloysure is a private company that offers employment relations and workplace health and safety advisory services to business owners. It has no affiliation with any government agency.

The ACCC [instituted proceedings against Employsure](#) in December 2018, alleging Employsure misled consumers that it was, or was affiliated with, a government agency, through its Google Ads published on Google search results pages.

In October 2020, the Federal Court [dismissed the ACCC’s case](#).

The ACCC’s appeal was unanimously [upheld by the Full Federal Court](#) in August 2021.

An example of the Google Ads run by Employsure

Fair Work Ombudsman Help - Free 24/7 Employer Advice

 www.fairworkhelp.com.au/Fair-Work/Australia ▼ 1300 856 110

The Free Advice Service For Employers On All Fair Work Topics. Call Us Now!

Business Owner HR Advice · 24/7 Immediate Solution · Free Specialist Advice · Confidential

“Best thing ever for small business start ups” – Trustpilot.com

Business Awards Advice

Unfair Dismissal Claims

Workplace Discrimination

Pay Rates for Your Staff

Employsure to pay \$3m penalty for misleading Google ads after ACCC appeal

Date

8 February 2023

Topics

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The Full Federal Court has upheld the ACCC's penalty appeal in a case against workplace relations advisor Employsure Pty Ltd and ordered Employsure to pay a penalty of \$3 million for making false and misleading representations in its online ads that it was, or was affiliated with, a government agency.

The Court set aside the \$1 million penalty originally imposed by the Federal Court, finding it was manifestly inadequate and stated that misrepresenting that one has government sponsorship or approval is very serious and must be deterred.

The Court found that the original \$1 million penalty was inadequate to deter Employsure and other potential businesses from similar actions in the future.

"We received more than 100 complaints about Employsure's conduct. We were concerned that many small business operators were misled by Employsure's ads into thinking they were getting help and advice from a government agency," ACCC Chair Gina Cass-Gottlieb said.

"We appealed the earlier \$1 million penalty order because we believed the conduct, the company's size and lengthy period during which they ran the misleading ads meant a higher penalty was warranted."

"We welcome this increased penalty, which we believe will help to deter similar breaches in the future. Penalties must be sufficiently high to deter others, so they cannot be seen as just an acceptable 'cost of doing business'," Ms Cass-Gottlieb said.

"This decision should serve as a reminder that it is a serious breach of trust to misrepresent a business as being part of the government, and that such breaches of the law will have serious consequences."

The Court also upheld the ACCC's cost appeal and made new orders requiring Employsure to pay the ACCC's costs of the initial penalty hearing and appeal.

Background

Employsure is a large, private company with offices in Sydney, Melbourne, Brisbane and Perth that offers employment relations and workplace health and safety advisory services to business owners for a fee under contract.

In the 2021 financial year Employsure had more than 23,500 clients. It has no affiliation with any government agency.

The ACCC [instituted proceedings against Employsure](#) in December 2018, alleging Employsure misled consumers that it was, or was affiliated with, a government agency, through its Google Ads published on Google search results pages.

In October 2020, the Federal Court [dismissed the ACCC's case](#).

The [Full Federal Court upheld the ACCC's appeal unanimously](#) in August 2021.

In November 2021, the original [Federal Court judge imposed a \\$1 million penalty](#) on Employsure for this conduct. The ACCC [appealed this penalty decision](#) in January 2022.

Employsure's ads appeared in Google search results between August 2016 and August 2018, when consumers searched for "fair work ombudsman", "fair work commission" and other associated terms, and featured headlines including "Fair Work Ombudsman Help – Free 24/7 Employer Advice" and "Fair Work Commission Advice – Free Employer Advice".

An example of the Google Ads run by Employsure:



The screenshot shows a Google Ad for 'Fair Work Ombudsman Help - Free 24/7 Employer Advice'. The ad includes the website URL 'www.fairworkhelp.com.au/Fair-Work/Australia', a phone number '1300 856 110', and a description of the service as 'The Free Advice Service For Employers On All Fair Work Topics. Call Us Now!'. It also lists 'Business Owner HR Advice', '24/7 Immediate Solution', 'Free Specialist Advice', and 'Confidential'. A quote from Trustpilot.com is included: 'Best thing ever for small business start ups'. At the bottom, there are four links: 'Business Awards Advice', 'Workplace Discrimination', 'Unfair Dismissal Claims', and 'Pay Rates for Your Staff'.

Fair Work Ombudsman Help - Free 24/7 Employer Advice
Ad www.fairworkhelp.com.au/Fair-Work/Australia ▼ 1300 856 110
The Free Advice Service For Employers On All Fair Work Topics. Call Us Now!
Business Owner HR Advice · 24/7 Immediate Solution · Free Specialist Advice · Confidential
"Best thing ever for small business start ups" – Trustpilot.com
Business Awards Advice Unfair Dismissal Claims
Workplace Discrimination Pay Rates for Your Staff