

## Do your homework on gyms before signing

Have you resolved to get fit and healthy? The Office of Fair Trading (OFT) is urging Queenslanders to do their homework before signing up for gym membership or weight loss deals.

The OFT regularly receives calls and written complaints from consumers who have made the mistake of not taking the time to read membership contracts and understand the conditions.

"Before you sign a contract, do your research," a Fair Trading spokesman said. "Take the time to read through all the terms and conditions, including the fine print, and ask questions about what happens if you

want to cancel, suspend or transfer your membership.

"Be aware of direct debit terms and conditions for paying gym fees, note when payments are due, what fees are involved, and how the agreement can be terminated or amended.

"You also need to ensure you have enough funds in your account to cover the payment each month or your bank may charge penalty fees."

Fair Trading advises Queenslanders searching for the best gym or weight loss deal to take careful note of:

- the initial joining fee;

- the fee for membership;
- the method and timeframe for cancelling direct debit authorities;
- the administration fee, which applies if the contract is terminated during the cooling-off period; and
- the termination fee

"If you have signed a contract for a gym membership, remember under the *Fair Trading (Code of Practice – Fitness Industry) Regulation 2003*, you can cancel the contract within the 48-hour cooling-off period if you have second thoughts," the spokesman said.

For expert advice on contracts, contact your local solicitor.

## National bankruptcy campaign

The Insolvency and Trustee Service Australia (ITSA), has announced it is launching a national campaign targeting bankrupts who have failed to comply with their legal obligations under the *Bankruptcy Act*, Findlaw News reports.

This follows a routine audit by ITSA which found there were hundreds of bankrupts all over Australia who had failed to comply with their legal obligations, such as the requirement to file their Statement of Affairs.

Under the *Bankruptcy Act*, once a debtor becomes bankrupt by order of a court hearing a creditor's petition, the bankrupt has 14 days to complete and file a Statement of Affairs outlining their financial and personal particulars. Penalties that can be imposed for breaches of the Act range from fines and good behaviour bonds through to terms of imprisonment.

ITSA's national manager of fraud investigation, Jeff Hanley, said ITSA's purpose was to provide a personal insolvency system that produced equitable outcomes for debtors and creditors, enjoyed

public confidence and minimised the impact of financial failure on the community.

"Broadly speaking, the bankruptcy laws in Australia are designed to provide legitimate relief (and) to give bankrupts some breathing space to get back on their feet, while simultaneously providing creditors with some level of repayment when assets are identified and subsequently realised," Mr Hanley said.

"ITSA will take action against those bankrupts who exploit the well-intentioned protection offered under the bankruptcy laws... when ITSA identifies criminal behaviour such as this, it investigates the matter and pursues the offender to the full extent of the law."

Mr Hanley said that last year ITSA investigated 536 individuals for criminal offences, with 120 found guilty and many others warned of the consequences of their actions.

"This year we are expecting to deal with a much higher number", Mr Hanley said.

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A company who sacked a woman for wearing high heels has been ordered to give the woman her job back.

## a case in point . . . ugg boots and trade marks

Who would have thought the humble ugg boot could be the subject of such scrutiny? A recent decision by Australia's trade mark regulatory body has removed the term 'ugg boot' from the register of trademarks and will allow Australian manufacturers and retailers the right to call sheepskin boots 'ugg boots'.

### Background

The term 'ugh-boots' was registered as a trade mark in Australia in 1971. 'Ugh' was registered by the same owner in 1982. Both of these trade marks were sold to Ugg Holdings Inc in 1996. In 1999, Ugg Holdings registered the Ugg logo.

The issue first attracted media interest when American-based company Ugg Holdings Inc (a subsidiary of Deckers Outdoor Corporation) allegedly threatened to take legal action against Australian exporters and United States importers of sheepskin boots using the terms 'ugg' or 'ugh' as descriptions of their products.

In December 2003, Perth retailers Bruce and Bronwyn McDougall (the applicants) filed an application under s92 of the *Trade Marks Act 1995* with IP Australia – the Federal Government agency responsible for granting rights in patents, trade marks and designs – requesting the removal of the trade mark, claiming that the registered trade mark was not used during the period from 30 November 2000 until 30 November 2003.

Ugg Holdings Inc (the opponent) filed a notice opposing the removal of the trade mark in May 2004, contending as the sole ground for opposition that the trade mark had been used within the period in question.

### The case

Section 92 of the *Trade Marks Act 1995*, relates to the application for removal of a trade mark from the Register of Trade Marks.

The applicants submitted that in using the terms 'ugh', 'ugh boots' (with no hyphen), 'ugg', 'Ugg Australia', or 'ugg boots', the opponent had not used its registered trade mark in Australia within the required three-year period under the Act. They also contended the opponent had only used a generic term (prior to registering a trade mark, the Register of Trade Marks determines whether a trade mark has any descriptive or generic meaning that may make it unsuitable for registration).

A central piece of evidence in the case was an advertisement appearing in the *Sydney Morning Herald* in November 2003. The applicants claimed the advertisement did not display the registered trade mark 'ugh-boot'. The opponents countered that even though the hyphen in the trade mark 'ugh-boot' was missing in the advertisement, it was an alteration or addition which did not substantially affect the identity of the trade mark.

### Decision

Trade mark hearings officer Ian Thompson ruled that the trade mark 'ugh-boots' had not been used in Australia within the three-year period. Mr Thompson said: "The evidence overwhelmingly supports the proposition that the terms 'ugh boot(s)', 'ug boot(s)' and 'ugg boot(s)' are interchangeably

used to describe a specific style of sheepskin boot and are the first and most natural way in which to describe these goods." He also concluded the terms are required by other traders without any improper motive to describe the boots.

Mr Thompson also found that the trade mark 'ugh-boots' was registered and the hyphen was essential to its identity as a trade mark. He concluded that the advertisement included as evidence did not use that particular registered trade mark and as such the opponent had not demonstrated any use of the trade mark before, during or after the three-year period.

Subject to an appeal to the Federal Court by the opponent, the trade mark will be removed from the Register of Trade Marks.

### Implications

This is a significant development for Australian manufacturers and retailers of sheepskin boots and means they may now have the right to call the boots 'uggs', if there is no appeal. Deckers Outdoor Corporation still owns the trade mark in other jurisdictions, such as the United States, as trade mark laws are national laws and each country registers and protects trade marks within their own jurisdiction.

For more information on trade marks, seek legal advice from your solicitor.

## New laws to aid people with disabilities

Legislation has been introduced into State Parliament to strengthen and safeguard the rights of people with a disability.

The Disability Services Bill 2005 aims to improve the quality of disability services across Queensland, acknowledge the rights of people with a disability – including promoting their inclusion in the life of the community – and to ensure that disability services funded by the department are safe, accountable and respond to the needs of people with a disability.

The Minister for Disability Services, Warren Pitt, said the proposed new legislation retained the existing rights of people with a disability, and added two new rights:

- the right to live a life free from abuse, neglect or exploitation; and
- the right to receive disability services in a way that respects the confidentiality of personal information.

"Significant changes have occurred since Queensland first enacted disability services legislation in 1992, and the establishment of Disability Services Queensland in 1999," Mr Pitt said.

"The existing *Disability Services Act* contains many positive features and has contributed to greater community participation and inclusion of people with a disability in everyday life, but a review of the Act was necessary to ensure that it

keeps pace with changing community expectations."

Mr Pitt said the new Disability Services Bill focused on recognising human rights, consumer safeguards, service standards, accountability, and monitoring mechanisms.

"About 22 percent of Queenslanders have a disability, according to the latest available Australian Bureau of Statistics figures."

Mr Pitt said the Bill gave the Government the power to act swiftly when it needed to investigate instances of abuse, neglect, or exploitation of people with a disability within funded non-government services.

# Pie in the sky awards

*Do you want to make a killing on the share market? This stock is ready to explode – you can make a 280 percent return when the target price is reached* (unfortunately, the stock never quite got there, closing the year at a meagre US\$0.39).

*Why not turn \$10,000 into \$124,600 in a single year by trading currency and US Treasury bonds, with your capital guaranteed by the International Investment and Securities Commission?*

For a handling fee (and other charges to be revealed later), you can collect your winnings from a lottery supposedly set up under the will of the late Princess Diana.

We've all received the emails of investment schemes promising instant riches, but with so many scams out there, which ones are this year's award-winning investment scams?

The Australian Securities and Investment Commission (ASIC) has just released its 2006 'Pie In The Sky' awards ('the PITS'), a who's who list of the most outrageous and far-fetched financial schemes of the year.

The top gong for 2006 goes to an illegal investment scheme promoted through wealth seminars throughout Australia. Operated by Mr Craig McKim, Pegasus Leveraged Options Group (Pegasus) lured around 90 unsuspecting investors and raised \$3.7 million. Over \$2.1 million of the funds raised were lost in personal gambling and other personal expenses by Mr McKim.

In the case of the Pegasus scheme, the NSW Supreme Court found investors were

promised returns of up to 8 percent a week – figures described by the court as "astronomical". Investors were even issued with a Certificate of Guarantee by a fictitious 'International Investment and Securities Commission'.

Mr McKim was jailed in October 2005.

According to ANZ's 2005 Australian financial literacy research, 85 percent of Australians know that high returns mean high risk, but some 47 percent would still be willing to invest their money in something offering well above market rates of return.

ASIC's acting executive director of consumer protection, Delia Rickard, said the purpose behind the awards was to warn the public.

"Pie-in-the-sky financial schemes still devastate far too many people, she said. "They frequently use sophisticated props and hard-sell techniques that lure even financially experienced people.

"Deal with licensed Australian businesses, because that way your rights are better protected if something goes wrong. Businesses can be checked by visiting ASIC's investor and consumer website, FIDO, at [www.fido.asic.gov.au](http://www.fido.asic.gov.au) or calling 1300 300 630."

For more information on illegal schemes that ASIC has taken court action over, obtained court orders, or identified those involved in court, please visit FIDO.

2006 'Pie in the Sky' runners up;

- A firm of London solicitors is administering Princess Diana's estate which includes a lottery promotion.

You've won a slice of her inheritance. Collect your winnings by contacting the writer. This is 'advance fee' fraud, having nothing to do with Princess Diana or her estate – You'll be asked to pay various 'handling' and 'administration' fees until your patience or your money runs out.

- Get into the action on the overseas share markets. 'This stock's ready to explode. It's our hot pick this week. It can easily go up to \$2.25 very fast here', says the email offering 'unparalleled investment research'. Recommended on 10 September 2005 at a price of US \$0.80, the stock topped out at US \$1.30 on 14 September, and then sank to a paltry US \$0.39 by the end of 2005 – Without a shred of protection, you could easily be taken to the cleaners. A time-honoured scam, these emails pump up interest in little-known offshore companies traded through international bulletin boards, so the promoters can dump their own shares quickly before the share price drops.
- Surprise! You own some valuable overseas shares. If you want to double check, just contact the International Asset and Compliance Centre. Just pay the fee to have these shares transferred to your name – No genuine investor protection agency exists. It's just another front set up to persuade you to pay the fees.

## 2,000 cars impounded under anti-hooning laws

More than 2,000 Queensland drivers have had their vehicles confiscated since the introduction of Queensland's anti-hooning laws three years ago.

Police Minister Judy Spence said the laws were forcing dangerous drivers to realise that public roads and suburban streets were not race tracks.

"If you drive in a manner that is dangerous or causes excessive noise or smoke, then you will be caught by police and risk having your vehicle impounded," Ms Spence said.

The highest number of hoon offences were recorded in the South-East and North Coast police regions.

"Both regions combined account for more than half of Queensland's total vehicle confiscation figures," Ms Spence said.

"As of September, 702 drivers in the South-East region, which includes Logan, Beenleigh and the Gold Coast, had their

vehicles confiscated since these laws took effect. In the North Coast region there have been 521 vehicle confiscations."

Far North Queensland had the lowest number of vehicle confiscations, recording 96 offences since 2002.

The anti-hooning laws give police the power to impound vehicles used for hooning for 48 hours. Repeat offenders could have their car taken off the road for three months or even forfeited to the state after a third or subsequent offence.

"By September this year, only 46 offenders had been detected committing hoon offences on a second occasion in the past three years," Ms Spence said. "Three offenders have been detected committing a third offence – one in each of the Ipswich, Bundaberg and Redcliffe districts.

"This legislation is not aimed at targeting young drivers or car enthusiasts. If you abide by the law, there is no reason why this legislation should affect you."

## Teen takes action against mum for giving away pets

**A** 19-year-old is taking legal action against her mother for giving her pets away.

The girl came home to find her mother had taken her pet dog, seven puppies and two guinea pigs to a local animal rescue shelter.

The pair had apparently been arguing about the pets since the birth of the puppies. So when the girl went out to college, her mother seized the opportunity to offload the animals.

The daughter was so angry she went to the police station and pressed charges against her mother.

Police are investigating the charges, but are hoping to settle the matter before it comes before the court.

# Crack down on pseudoephedrine medications

Customers purchasing over-the-counter pharmacy medicines containing pseudoephedrine will now be required to present identification or satisfy the pharmacist of their genuine need for the medication, under new state laws.

Queensland's *Health (Drugs and Poisons) Regulation 1996* has been strengthened to prevent the diversion of medicines containing pseudoephedrine into the manufacture of illicit drugs.

The new laws, which came into effect from 1 January 2006, now classify all over-the-counter Schedule 2 medicines containing pseudoephedrine as 'Pharmacist

Only' Schedule 3 medicines.

Health Minister Stephen Robertson said pharmacists must not sell any Schedule 3 medicines containing pseudoephedrine unless they were satisfied the customer had a genuine, therapeutic need for the medication.

"Pharmacists will be authorised to request identification from unknown customers. They will also record details about each sale of Schedule 3 medicines containing pseudoephedrine, including details such as the date, brand name, quantity and the purchaser's name and address," Mr Robertson said.

Pseudoephedrine is commonly found in

medications such as nasal decongestants and cold and flu medications sold at pharmacies (note: similar products sold in supermarkets do not contain pseudoephedrine).

"We recognise the overwhelming majority of Queenslanders have a genuine therapeutic need for these medications," he said.

"However, the continued diversion of medicines containing pseudoephedrine for use as a precursor to manufacture methamphetamine (speed) is an issue of grave concern for health regulators and law enforcement agencies."

## Smoking laws hit retailers

Tobacco retailers now face tighter display restrictions and harsher penalties for selling cigarettes to minors under the latest phase of Queensland's anti-smoking laws.

The new legislation, which came into effect on December 31, will limit the size of cigarette product displays in retail outlets for the first time.

Under the new laws, minors who pretend to be the legal age to purchase cigarettes can also be fined.

Health Minister Stephen Robertson said that while pubs and clubs had been the most affected by smoking laws, tobacco retailers would be the focus of new laws in the New Year, with particular emphasis on the sale and supply of smoking products to children.

Under the new laws:

- Each retail outlet can show only one smoking product display. The maximum size of this display is one square metre for general retailers and three square metres for tobacconists. Cigarette cartons cannot be on display. Currently, there are no restrictions. In addition, the purchase of smoking products cannot accumulate shopper loyalty points, such as Fly Buys or fuel discounts.
- People under the age of 18 years who falsely represent their age in order to be sold smoking products will be committing an offence and may be subject to a maximum penalty of \$1,500. Currently, no law applies.

Penalties for sales to minors have also strengthened and include:

- \$10,500 fine for a first offence. Currently, the fine is \$5,250. A court can also prohibit the supplier from selling tobacco products for six months.
- \$21,000 fine for a second offence. Currently, the fine is \$10,500. A court can also prohibit the supplier from selling tobacco products for 12 months.
- \$31,500 for a third or subsequent offence. A court can also prohibit the supplier from selling tobacco products for three years.

Mr Robertson said more than 3,000 tobacco retailers had been sent a "Selling Smoking Products Information Kit", including required public awareness signage.

He said tobacco retailers who had not received a kit or were unsure of their responsibilities under the new laws could contact the Tobacco Hotline on 1800 005 998.

"Enforcement of the new laws for tobacco retailing will start at the end of March 2006, after a three-month education period," Mr Robertson said. "This will give retailers time to adapt to the new changes, however, I stress to retailers that previous laws still apply, particularly regarding sales to minors.

"Tobacco retailers also need to be aware that, if the same business is found to have repeated breaches of the new tobacco laws during the 'education period', this will result in an on-the-spot fine or prosecution."

The specialist Tobacco Control Investigation Team targets the illegal supply of smoking products to minors across the state by conducting surveillance of tobacco retail outlets.

There are currently 14 prosecutions pending for the illegal supply of smoking products to a child, including those as a result of surveillance during the recent Schoolies Week.

The new restrictions add to a busy past 12-months for tobacco laws in Queensland, as reported previously in the 'Newsletter of the Law'. Other restrictions which came into effect include a ban on smoking:

- between the flags on all patrolled beaches;
- within 10 metres of children's playground equipment;
- while standing within four metres of non-residential building entrances; and
- at all sporting venues administered by the Major Sports Facility Authority, including Suncorp Stadium, the Gabba, the Queensland Sport and Athletics Centre (formerly QEII Sports Centre and ANZ Stadium), the Sleeman Centre, the Brisbane Entertainment Centre, and Dairy Farmers Stadium, Townsville.

## Wearing high heels an occupational hazard

An industrial tribunal in Brazil has ruled that a woman who was sacked from her job for wearing high heels was unfairly dismissed.

Brazilian newspaper *Folha de Sao Paulo* reports that the company admitted sacking the 32-year-old woman, who was a secretary with the Planarc Company, solely because she wore high heels to work.

The company's lawyer said the woman's choice of footwear made her more likely to fall and injure herself, potentially costing the company money.

"She was an accident waiting to happen!" he said.

The tribunal ruled that, while the company would have been within its rights to discipline the woman, it should not have fired her. The company was ordered to offer the woman her job back.

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