

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

REGULATION

Court raises fine on human resources supplier for falsely representing that it had government approval.

By [Philip King and Keeli Cambourne](#) • 10 February 2023 • 4 minute read

Employsure, an HR specialist for small business, has been fined \$3 million for making false and misleading representations in its online adverts following an appeal by the Australian Competition and Consumer Commission (ACCC).

The Full Federal Court found the original fine of \$1 million imposed in November 2021 was “manifestly inadequate” and raised it to \$3 million, as well awarding costs to the ACCC.

Employsure engaged in “misleading or deceptive” conduct with Google adverts that misrepresented the company as having government sponsorship or approval, the court found.

“[Employsure] represented to business owners that Employsure is, is affiliated with, or is endorsed by a government agency when, in fact, Employsure is a private company that has no affiliation with, and is not endorsed by, any government agency,” it said.

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

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”.

ACCC chair Gina Cass-Gottlieb said the regulator acted after receiving complaints.

“We received more than 100 complaints about Employsure’s conduct,” she said. “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.”

The ACCC instituted proceedings against Employsure in December 2018 but 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 and the ACCC appealed this penalty decision in January 2022.

"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," Ms Cass-Gottlieb said.

"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'.

"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."